135 recommendations for reforms to the British Columbia *Freedom of Information and Protection of Privacy Act* and related transparency measures

Compiled and prepared by Stanley L. Tromp

An appendix to the author's submission to the B.C. Legislative Special Committee Review of the *FOIPP Act*, 2022

My purpose here is to provide government transparency advocates with a resource base of 135 recommended reforms to the B.C. *FOIPP Act* of 1992. They can select from, modify, or add to these items as they choose, to create their own lists of preferred amendments, and these can also be adapted by other provinces.

I have tried to be as comprehensive as possible, to detail every needed amendment to the B.C. *FOIPP Act* that I could conceive of (pared down from my original 200 items), and have considered the widest range of sources collected over three decades. There are several explanatory notes to explain and bolster the recommendations. Those marked with an * are what I regard as the 15 most pressing items. Overall, I hope to have found some sort of balance here between (1) the ideal, and (2) the politically achievable.

The Canadian sources are noted at the end of this file. The reader may find it helpful to print out or have open on a screen the most recent version of the B.C. *FOIPP Act* text (available at https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96165_00_multi) as a reference. – *S.T.*

***Recommendation #1**

Repeal the most negative features passed in Bill 22, the *Freedom of Information and Protection of Privacy Amendment Act (2021),* which are:

> ~ Sec. 3(3), that Part 2 of the *Act* does not apply to a record that does not relate to the business of the public body; • a record of metadata that (i) is generated by an electronic system, and (ii) describes an individual's interaction with the electronic system; • an electronic record that has been lawfully deleted by an employee of a public body and can no longer be accessed by the employee.
>
> ~ Sec. 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*.

~ Sec. 27. That Sec. 43 allows the public body – upon the Commissioner's approval – to disregard a request if (c)(i) it is excessively broad, or (ii) is repetitious or systematic.

~ Sec. 75 (1), that the head of a public body may require an applicant who makes a request to pay (a) a prescribed application fee.

The B.C. *FOIPP Act* must also make it unmistakable clear the Premier's office is covered by the *Act* (which Bill 22 might have placed in doubt to some).

Section 12 - Cabinet records

Recommendation #2

Delete clause "or prepared for submission" from B.C. *FOIPP Act* Sec. 12(1). Sec. 12 should establish that documents may only be withheld if they were actually discussed by cabinet, not if they were only prepared for that purpose but never were. i.e., no record can be said to reveal "deliberations" if it was never actually deliberated upon. Sec. 12 should also be amended to clarify that "deliberations" only applies to the actual deliberations of Cabinet, not any other material.

(Such a new clause is regrettably necessary to stop a deleterious practice often observed in cabinet rooms in Commonwealth nations, whereby Cabinet members simply take documents into Cabinet and then out again and claim an exemption - behavior which is now a perfectly legal way to circumvent disclosure obligations in most Canadian jurisdictions. In Australia, applicants have had FOI requests refused because documents were "prepared for submission to Cabinet (whether or not it has been so submitted).")

***Recommendation #3**

Add a harms test to Sec. 12, replicating the terms found in Scotland's FOI law, Sec. 30:

> Information is exempt information if its disclosure under this *Act*
>
> (a) would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the [Ministers]
>
> (b) would, or would be likely to, inhibit substantially (i) the free and frank provision of advice; or (ii) the free and frank exchange of views for the purposes of deliberation; or
>
> (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs

Two terms could be added from the FOI statute of Ghana, which prescribes in Sec. 6.(1)(c) that cabinet records are exempt that:

> [i] prejudice the effective formulation or development of government policy;
>
> [ii] frustrate the success of a policy by the premature disclosure of that policy;

At the bare minimum, the B.C. *FOIPP Act* should reflect the terms used in the FOI statute of the United Kingdom, on policy advice and cabinet confidences, Sections 35 and 36.

Recommendation #4

Sec. 12 should not apply to a document that contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet. This would be somewhat more open than the terms now set in Sec. 12(2)(c).

(In the Newfoundland FOI law, such factual material can apparently be freed in any circumstances, for in Section 27. (1), "'cabinet record" means [….] (d) a discussion paper, policy analysis, proposal, advice or briefing material prepared for Cabinet, excluding the sections of these records that are factual or background material." In the FOI statute of the United Kingdom, in Sec. 35, once a cabinet decision has been made, "any statistical information used to provide an informed background to the taking of the decision" is not exempt.)

Recommendation #5

Amend Sec. 12(2) to state that the Sec. 12 exemption does not apply to Cabinet agendas or topic headings, including such examples as "items for discussion" and "legislation review."

(B.C. Supreme Court ruling 2011 BCSC 112 stated: "In my view, the conclusion of the OIPC delegate, that headings that merely identify the subject of discussion without revealing the 'substance of deliberations' do not fall within the s. 12(1) exception, was a reasonable decision.")

Recommendation #6

Clearly mandate the principle of severability to Cabinet records. Implement recommendation 4-5 of the *ATI Act Review Task Force* report of the federal Treasury Board Secretariat, 2002: "That a prescribed format be developed for Cabinet documents that would allow for easy severance of background explanations and analyses from information revealing Cabinet deliberations such as options for consideration and recommendations."

Recommendation #7

The time period during which Cabinet confidences cannot be disclosed via Sec. 12 should be reduced from 15 years to 10 years, as in Nova Scotia's FOI law.

Recommendation #8

Proactively publish Cabinet minutes 15 years after their creation, and on the government internet, eventually moving to 10 years after their creation.

Recommendation #9

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

these would be released proactively, not requiring B.C. *FOIPP Act* requests. Section 8(1)(i) of India's *Right to Information Act 2005* provides a good example of such a clause.

Recommendation #10

In B.C. *FOIPP Act* Sec. 12, implement the advice of federal Commissioner John Reid in his 2002 report, to amend the *ATI Act* to clearly state that summaries of decisions are not considered Cabinet confidences once they are severed from other information which may reveal the substances of deliberations of Cabinet or one of its committees. The Act should also remove all potential uncertainties in the wording around cabinet documents, making it clear that they are defined solely by their substance, not by their titles.

(He noted: "Such summaries - e.g., Treasury Board circulars implementing decisions relating a new policy or budget reduction - should be routinely available to the public. All governments summarize Cabinet decisions in order to communicate these to the public or allow government institutions to implement the directions of Cabinet. Not all such summaries are made available to the public in press releases or other similar public documents.")

Recommendation #11

Establish that Cabinet may choose to publish or grant access to information that is otherwise exempt under Sec. 12.

Recommendation #12

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

Section 13 - Policy Advice

***Recommendation #13**

Amend Sec. 13 with the wording of Article 19's *Model Freedom of Information Law*, 2001:

> 32. (1) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to:
>
> (a) cause serious prejudice to the effective formulation or development of government policy;
>
> (b) seriously frustrate the success of a policy, by premature disclosure of that policy;

(c) significantly undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views; or

(d) significantly undermine the effectiveness of a testing or auditing procedure used by a public body.

(2) Sub-section (1) does not apply to facts, analyses of facts, technical data or statistical information.

At a bare minimum, consider the harms test for policy advice records in Sec. 35 of the FOI law of the UK, Canada's parliamentary model, and South Africa (Sec. 44).

Recommendation #14

That Sec. 13 be amended to add a definition of "advice." It should also be clarified as to the type of sensitive decision-making information it covers and include a listing of those type of documents it specifically does not cover.

As well, clarify that "advice" and "recommendations" are similar terms often used interchangeably that set out suggested actions for acceptance or rejection during a deliberative process, not sweeping separate concepts.

Recommendation #15

That Sec. 13 be amended in order to restrict its application to advice and recommendations exchanged among public servants, ministerial staff and Ministers – that is, only information which recommends an actual decision or course of action by a public body, minister or government.

The federal MPs *Open and Shut* report of 1987 well advised that the *ATI Act*'s policy advice exemption "only apply to policy advice and minutes at the political level of decision-making, not factual information used in the routine decision-making process."

Recommendation #16

Clearly mandate the principle of severability to all policy advice records. (This should be stated at the start of the exemptions portion of the *Act*, for all exemptions, but might need to be reiterated here.) A prescribed format should be developed for Sec. 13 documents that would allow for easy severance of exempt from releasable non-exempt material.

***Recommendation #17**

Amend B.C. *FOIPP Act* Sec. 13 to include a section on the model of Quebec's FOI law Sec. 38, whereby the B.C. government may not withhold policy advice records after the final decision on the subject matter of the records is completed and has been made public by the government.

If the record concerns a policy advice matter that has been completed but not made public, the B.C. government may only withhold the record for two years.

If the record concerns a policy advice matter that has neither been completed nor made public, the B.C. government may only withhold the record for five years - on the model of Nova Scotia's FOI law, Sec. 14.

> (In 2015 the federal Information Commissioner advised "reducing the time limit of the exemption for advice and recommendations to five years or once a decision has been made, whichever comes first.")
>
> *Also see Appendix 1, below, regarding the Dutch FOI protection for policy analysts*.

Sec. 14 – Legal Affairs

The B.C. *FOIPP Act's* Sec. 14 reads in full: "The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege."

Recommendation 18

Solicitor-client privilege, in terms of advice given to public bodies by officials who also just happen to be lawyers, acting in their policymaking and statute-designing roles, was not intended to be protected to the same degree as solicitor-client privilege in litigation or law enforcement matters. This must be made clear in an amended B.C. *FOIPP Act,* that the former matters are not "legal advice," and should instead be dealt with instead in Sec. 13, the policy advice exemption.

The specificity in Quebec's FOI law is helpful in interpretations: "31. A public body may refuse to disclose a legal opinion concerning the application of the law to a particular case, or the constitutionality or validity of legislative or regulatory provisions, or a preliminary or final draft of a bill or regulations." This is valid only if this opinion does not constitute policy advice, as per B.C. *FOIPP Act* Sec. 13.

(Overall, for the B.C. *FOIPP Act* Sec. 14 legal affairs exemption, the main issue is the wide scope rather than the absence of harm; if the scope is narrow, then harm can largely be presumed, although a time limit and public interest override are also important. This exemption should be mainly restricted to legal or administrative proceedings, and designed to ensure a fair trial.)

***Recommendation #19**

Amend Sec. 14 to state that the exemption cannot be applied to records under legal privilege 30 years after they were created, per the model of the UK FOI law's Sec. 43. Better yet, the American *FOIA* sets a 25 year limit for such records.

(On time limits, federal Information Commissioner John Reid well wrote: "It has been obvious over the past 22 years that the application and interpretation of [the legal affairs *ATI Act* exemption] by the government (read – Justice Department) is unsatisfactory. Most legal

opinions, however old and stale, general or uncontroversial, are jealously kept secret. Tax dollars are used to produce these legal opinions and, unless an injury to the interests of the Crown can reasonably be expected to result from disclosure, legal opinions should be disclosed.")

***Recommendation #20**

Add a harms test to Sec. 14, to state the exemption can only be applied to withhold records prepared or obtained by the agency's legal advisors if their release could reveal or impair procedural strategies in judicial or administrative processes, or any type of information protected by professional confidentiality that a lawyer must keep to serve his/her client. Sec. 14 should be limited to a litigation privilege or matters which would be privileged from production in legal proceedings.

(Politicians sometimes summon a lawyer to merely sit in on a closed door meeting to listen, and then term his or her presence "legal advice." Lawyers also fight to keep secret their taxpayer-funded legal billing figures, claiming solicitor-client privilege on this point, even after all appeals are finished, and the B.C. *FOIPP Act* should prohibit this.)

Recommendation #21

In its brief to the Senate on Ottawa's *Bill C-58*, the Quebec journalists' federation noted a special problem in the *ATI Act*, which should be blocked in a reformed B.C. *FOIPP Act*:

"Our members' experience in Quebec is instructive; government bodies have a tendency to add the names of lawyers or notaries to distribution lists on documents, so they are able to refuse to disclose the documents, citing solicitor-client privilege. The Commission d'accès à l'information, which makes review decisions in Quebec, has stated that in order to assert solicitor-client privilege, there had to be a relationship with a client; the mere fact of including the name of a lawyer or notary in a distribution list does not create that relationship. Solicitor-client privilege is not a catch-all concept for camouflaging documents."

Recommendation #22

Add a clause to the B.C. *FOIPP Act* Sec. 14 that information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

Section 16 - intergovernmental relations

Recommendation #23

Amend Sec. 16 - "Disclosure harmful to or negotiations" - to state that information may be withheld "where there is an implicit or explicit agreement or understanding of confidentiality on the part of both those supplying and receiving the information, and where disclosure would cause serious harm based on reasonable expectations of secrecy."

Recommendation #24

Amend Sec. 16 to state that, if the Canadian public body wishes to apply this exemption, it must first consult with the other government to ask if it would object to disclosure of the records, as likely to cause "serious harm based on reasonable expectations of secrecy," not just unilaterally claim that it would do so without inquiring.

Recommendation #25

Amend the B.C. *FOIPP Act* to read: "16. (4) The head of a government institution shall disclose any record requested under this Act that contains information described in subsection (1) if the government, organization or institution from which the information was obtained (a) consents to the disclosure; or (b) makes the information public."

Sec. 25 - The Public Interest Override

Recommendation #26

Clearly establish in the B.C. *FOIPP Act* Sec. 25 that there shall be no consideration of temporal urgency in applying a public interest override.

(The B.C. Information and Privacy Commissioner considered this question in a report of 2015. After the environmental disaster at the Mount Polley mine tailings pond dam, she received complaints that the provincial government had failed to proactively release data on the risks, before the event, per *FOIPP Act* Sec. 25, public interest override. She advised "that Section 25(1)(b) be re-interpreted to no longer require an element of temporal urgency for the disclosure of information that is clearly in the public interest.")

Recommendation #27

B.C. *FOIPP Act* Sec. 25 (1) commendably mandates the immediate release of records: "(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or (b) the disclosure of which is, for any other reason, clearly in the public interest."

Yet other features in several national FOI laws could be considered for addition to the Sec. 25 override (while emphasizing such a list is not exhaustive):

- a contravention of, or a failure to comply with a law or regulation
- an imminent and serious threat to the prevention of disorder or crime or the protection of the rights or freedoms of others
- (a) a miscarriage of justice; or (b) significant abuse of authority or neglect in the performance of official duty; injustice to an individual; (c) danger to the health or safety of an individual or of the public; or (d) unauthorised use of public funds

- ignoring regulations, unauthorized use of public resources, misuse of power, and other related maladministration issues.

- consumer protection (and this factor should be added to the B.C. *FOIPP Act*'s override in Sec. 21 on third party business secrets)

- it concerns urgent cases threatening public security and health, as well as natural disasters (including officially forecasted ones) and their aftermaths

- it presents the overall economic situation of the nation

Recommendation #28

Consider adding to the B.C. *FOIPP Act* these terms in Mexico's FOI law: "14. Information may not be classified when the investigation of grave violations of fundamental rights or crimes against humanity is at stake."

Recommendation #29

Place in the B.C. *FOIPP Act* these principles in Article 19's *Model Freedom of Information Law*, 2001:

> Notwithstanding any provision in this Part, a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.

Article 19 also asserts that the bar should not be set high to apply the override: "Disclosure should not need to be vital in the public interest; rather, the public interest in disclosure should just outweigh the interest in secrecy."

Recommendation #30

The override in the Australian FOI law below is rather limited, yet some provisions below help shore up whatever is there. While it seems regrettable that such (perhaps) self-evident points are necessary to assert, this may stem from political realism and experience. These might be considered for the B.C. *FOIPP Act* Sec. 25:

> Irrelevant factors – 11A (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
>
> (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
>
> (b) access to the document could result in any person misinterpreting or misunderstanding the document;
>
> (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
>
> (d) access to the document could result in confusion or unnecessary debate.

Recommendation #31

Encourage the Commissioner to devote a chapter of his annual report to note serious cases of failure where the government and agencies had an obligation to proactively disclose information in the public interest per B.C. *FOIPP Act* Sec. 25 (whether or not an FOI request for access was made), but did not. Seek and consider input on further measures to guarantee the Sec. 25 duty of proactive publication.

Section 3 (7) – the B.C. *FOIPP Act* and other statutes

B.C. *FOIPP Act* Sec. 3(7) [formerly Sec. 79] reads: "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.*"

Recommendation #32

Whereas the B.C. *FOIPP Act*'s existing exemptions afford adequate protection for all legitimate secrets, delete the *Act*'s Sec. 3(7), and so render this *Act* supreme on disclosure questions.

Recommendation #33

If that is not accepted, there is a secondary option (which FIPA advised in 2005): Extend coverage to categories of records exempted by "notwithstanding clauses" in other statutes.

Recommendation #34

If the courses on Sec. 3(7) above are not accepted, then at the very least mandate that an all-party committee study the necessity of each paramountcy clause in other Acts that override the B.C. *FOIPP Act,* with a view to repealing or amending those clauses.

Recommendation #35

If B.C. *FOIPP Act* Sec. 3(7) is retained, prescribe in the law at a minimum that the B.C. Information and Privacy Commissioner must be consulted when new overrides are to be added, to note where the information would not be protected by a general exemption that already exists in the B.C. *FOIPP Act*. Consider whether to grant the Commissioner the power to veto such an addition.

Recommendation #36

Even if Victoria does not wish to delete B.C. *FOIPP Act* Sec. 3(7), it can be noted that even Ottawa recognizes such a section's problematic nature, in the Justice Department of Canada's *A Comprehensive Framework for Access to Information Reform: A Discussion Paper*, 2005. At the barest minimum, this advice therein should be implemented:

"In relation to the second issue, that of future additions to [*ATI Act* Sec. 24's schedule], the Government believes that criteria should also be adopted. These could include: whether the Government institution has a demonstrable and justifiable need to provide an iron clad guarantee that the information will not be disclosed. The Government shares the opinion of the Task Force that the standard to be met for Section 24 [the equivalent of B.C. *FOIPP Act* Sec. 3(7)] protection should be very high. In addition to meeting the criteria, therefore, the government institution seeking to add a confidentiality provision to Schedule II should be required to justify why the information in question cannot be adequately protected by the other exemptions in the *Act*."

Recommendation #37

Consider the advisability of Antigua and Barbuda's FOI law, Sec. 6(3): "Nothing in this *Act* limits or otherwise restricts the disclosure of information pursuant to any other law, policy or practice."

Recommendation #38

Amend the B.C. *FOIPP Act* to allow other forms of Sec. 23 notice - public notice or advertisement - whenever substituted notice is likely to be effective, practical and less costly than direct notice.

(So advised in the 1987 MPs *Open and Shut* report and Commissioner John Reid's 2002 report. The latter explained that in the *ATI Act*, institutions must give direct notice to and consult with third parties before records may be released. This adds very long delays; and often there are so many of these third parties - in one case he noted *126,000* of them – that direct notice is simply impractical, and so departments take the path of least resistance and simply refuse to disclose the records.)

***Recommendation #39**

The B.C. *FOIPP Act* reads: "21 (1) The head of a public body must refuse to disclose to an applicant information [….] (b) "that is supplied, implicitly or explicitly, in confidence." Add the clause: "Information negotiated in confidence is not exempt from disclosure."

(In his landmark order Order 01-20, the B.C. Information and Privacy Commissioner ruled that the UBC-Coca Cola contract should be released, despite Sec. 21, because it contained information not *supplied* in confidence, but only *negotiated* in confidence between UBC and the company: "The parties, in effect, jointly created the records." This worthy principle needs to be placed in the *Act*.)

Recommendation #40

Add these terms to the B.C. *FOIPP Act*, from Justice Gomery's report *Restoring Accountability*, 2006:

Definitions: '"trade secret" means any information, including a formula, pattern, compilation, program, device, product, method, technique or process (a) that is used, or may be used, in business for any commercial advantage; (b) that derives independent economic value, whether actual or potential, from not being generally known to the public or to other persons who can claim economic value from its disclosure or use; (c) that is the subject of reasonable efforts to prevent it from becoming generally known to the public; and (d) the disclosure of which would result in harm or improper benefit to the economic interests of a person or entity'"

Scope of Coverage

[**Background:** Sec. 46 (d)(iv) of Bill 22 states the minister may add subsidiaries or other entities to FOI coverage, if he/she "determines that it would be in the public interest." We may note this is, at least, some kind of response from Victoria to persistent public objections on the subsidiary problem, hitherto ignored. But there is, of course, a world of difference in law between "may" and "must." In actual fact, if coverage is ever applied to the $500 million InBC Investment Corp. - where it is most needed - this move would be surprising but always welcome. This wholly discretionary new section was likely designed to create the illusion of solving the subsidiary problem without actually doing so, and thus push it all off the public's agenda. If that is the case, then the section's net effect is to be worse than useless – and hence the measures below.]

Recommendation #41

Extend the coverage of the B.C. *FOIPP Act* to all offices and branches of the Legislature.

***Recommendation #42**

On government subsidiaries, amend the B.C. *FOIPP Act* to state that all such entities *must* be automatically covered by the *Act*:

~ any institution that is controlled by a public body, or

~ performs a statutory or public function, or

~ is vested with public powers; or has a majority of its board members appointed by it, or

~ is 50 percent or more publicly funded, or

~ is 50 percent or more publicly owned

This includes the InBC Investment Corp., public foundations and all crown corporations and their subsidiaries. For purposes of this *Act*, a private body includes any body, excluding a public body, that: – (a) carries on any trade, business or profession, but only in that capacity; or (b) has legal personality.

Recommendation #43

There are more details below to flesh out the criteria above, which need to be placed in the B.C. *FOIPP Act*:

- institutions having the power to establish regulations or standards in an area of B.C. jurisdiction

- institutions responsible for carrying out an important public policy on behalf of the government; or it performs functions or provides services pursuant to federal statute or regulation

- statutory boards, tribunals, agencies and commissions

- nationalized industries

- non-departmental bodies or quangos (a British term for quasi non-governmental organizations)

- consulting firms, research institutes and universities under contract with government, but only to the extent of their public duties; or the B.C. *FOIPP Act* should deem that all contracts entered into by scheduled institutions contain a clause retaining control over all records generated pursuant to service contracts.

- government institutions, including Special Operating Agencies, and all present and future public foundations

- any entity that provides under contract with a public authority any service whose provision is a function of that authority

- agencies whose capital stock forms part of the domain of the State

- if public institutions are exclusively financed out of a Consolidated Revenue Fund, they should be covered. Agencies that are not financed exclusively in this way, but can raise funds through public borrowing should be included, with the major determinant being their degree of government control

- an entity covered entity should be covered if owned totally or partially or controlled or financed, directly or indirectly, by public funds, but only to the extent of that financing

- An entity should be covered if it carries out a statutory or important public function or a statutory or public service, but only to the extent of that statutory or public function or that statutory or public service.

Recommendation #44

Student societies and student governments of post-secondary public educational entities should be covered by the B.C. *FOIPP Act. (See Appendix 8 of Tromp's report* A Right Under Siege *for an in-depth explanation.)*

Recommendation #45

The B.C. *FOIPP Act* should be amended to cover any entity in which a majority of its governing board members are appointed by government or a minister - or if not so appointed, in the discharge of their duties are public officers or servants of the Crown - it or its parent is directed or managed by one or more persons appointed pursuant to statute.

Recommendation #46

Consider the proposal of Article 19, that private bodies themselves should also be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health. Inter-governmental organizations should also be subject to FOI regimes based on the principles enunciated above.

Recommendation #47

The B.C. *FOIPP Act* states in Sec. 3(1): "This Act applies to all records in the custody or under the control of a public body." Clearly and explicitly define these legal terms in the statute., i.e., what exactly is record "custody" and "control."

Recommendation #48

Render it unlawful in the B.C. *FOIPP Act* to store records offsite - or at a site owned by a private company partnering with government – so as to claim these are not in the state's "custody" and cannot be accessed.

Emulate Quebec's FOI law on this issue: "1.1. This Act applies to documents kept by a public body in the exercise of its duties, whether it keeps them itself or through the agency of a third party."

Recommendation #49

The B.C. *FOIPP Act* should set that all contracts entered into by scheduled institutions contain a clause retaining control over all records generated pursuant to service contracts. Implement this proposal from the federal Treasury Board Secretariat, in *Access to Information: Making it Work for Canadians. ATIA Review Task Force* report, 2002:

> 3-3. That 'the government's Policy on Alternative Service Delivery be amended to ensure that arrangements for contracting out the delivery of government programs or services provide that: records relevant to the delivery of the program or service that are either transferred to the contractor, or created, obtained or maintained by the contractor, are considered to be under the control of the contracting institution; and the *Act* applies to all

> records considered to be under the control of the contracting institution, and the contractor must make such records available to the institution upon request.

Recommendation #50

The question arises on who should have the authority to determine what entities must be covered according to the criteria, and how. The B.C. Information and Privacy Commissioner should have this authority; and amendments to the B.C. *FOIPP Act* should create the right for any person to make a complaint to the Commissioner if the government fails to add any particular government institution or institutions to FOI coverage, similar to the proposal in the federal Commissioner's *Blueprint for Reform*, 2001:

> The mechanism which is recommended is this: Cabinet should be placed under a mandatory obligation to add qualified institutions to Schedule I of the *[ATI] Act.* Any person (including legal person) should have the right to complain to the Information Commissioner, with a right of subsequent review to the Federal Court, about the presence or absence of an institution on the *Act*'s Schedule I. As at present, the Commissioner should have authority to recommend addition to or removal from the Schedule and the Federal Court, after a *de novo* review, should have authority to order that an institution be added to or removed from the Schedule.

***Recommendation #51**

Amend the Act so that government and public agencies must post all P3 partnership and large supply and service contracts on their websites within one week of their finalization - except for small portions where genuine commercial confidentiality or other legitimate interests may be protected, and only per B.C. *FOIPP Act* exemptions, which may be appealed to the OIPC. At the very least, they should be released routinely (when appropriately redacted) upon request, without an FOI application required.

Recommendation #52

Consider adding South Africa's FOI legal provision (which is also set in that nation's Constitution) that allows individuals and government bodies to access records held by private bodies when the record is "necessary for the exercise or protection" of people's rights.

Recommendation #53

The B.C. *FOIPP Act* should be amended to provide that an agency, board or commission may not be removed from compliance with the *Act* by virtue of changing its name but continuing to perform the same functions.

Recommendation #54

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

(By far the most intransigent problem is that dozens of Canadian entities have a "shared jurisdiction" amongst federal, provincial and other governments; since it is claimed that these bodies do not fit the within scope of any one partner's FOI laws, they fall between the cracks and are covered by none. A good example of such an FOI-exempt entity is the First Nations Health Authority, a B.C.- federal partnership.)

Recommendation #55

Create a special schedule of which named entities qualify as an "aboriginal government," while criteria for this should be added also.

Duty to document, and record retention

[**Background:** The disastrous trend towards "oral government" – whereby government officials do not create or preserve records of their decisions or policy development because they do not wish such records to be ever made public through the FOI process – is growing each year. The *Information Management Act* passed by NDP in 2019 does not create a true "duty to document" government actions and decisions, despite the government's voluble claims; it mere gives the Chief Information Officer the *discretion* to bring in "directives and guidelines" on the creation of adequate records.

When in opposition, the NDP's private member's *Bill M-207* of 2016 stated: "Every public body and service provider *must* create and maintain full and accurate records of government information." (Italics mine.) The party, when running for election in 2017, in response to a questionnaire to FIPA, promised "to create a positive duty to document government actions for greater accountability to the public." Yet this was never done. This inaction counters the advice of the B.C. Information and Privacy Commissioner, past Legislative Special FOIPP Committee reviews, and many others.]

***Recommendation #56**

The Government should adopt legislation *mandating* public servants to fully document governmental functions, policies, procedures, decisions, recommendations, essential transactions, advice, and deliberations. Make it an offence to fail to do so or to destroy documentation recording decisions, or the advice and deliberations leading up to decisions. It includes records of any matter that is contracted out by a public office to an independent contractor.

This requirement would ideally be placed in a new comprehensive B.C. *Information Management Act* (rather than the failed *Act* passed in 2019 with its discretionary rules, a law which should be repealed as the new statute replaces it). The new B.C. *Information Management Act* should apply to every entity covered by the B.C. *FOIPP Act.*

Details would be worked out in policy at a ministry, even program, level. Government should consider adopting a risk-based approach, with the nature and significance of decisions, actions and transactions being used to determine which records have to be documented and in what manner. There should be a (non-exhaustive) list of examples of records to be generated. The

Information and Privacy Commissioner must be granted authority over this new *Act*, with the powers to ensure compliance with it.

Recommendation #57

The body responsible for archives would develop, in coordination with the Information and Privacy Commissioner, a records management system which will be binding on all public authorities. Such codes should be developed in consultation with public bodies and then laid before the Legislature.

Recommendation #58

Implement these terms in a new B.C. *Information Management Act* taken from Article 19's *Principles of Freedom of Information Legislation*, 1999, endorsed by the United Nations:

> Destruction of records - To protect the integrity and availability of records, the law should provide that obstruction of access to, or the willful destruction of, records is a criminal offence. The law should also establish minimum standards regarding the maintenance and preservation of records by public bodies. Such bodies should be required to allocate sufficient resources and attention to ensuring that public record-keeping is adequate. In addition, to prevent any attempt to doctor or otherwise alter records, the obligation to disclose should apply to records themselves and not just the information they contain.

Recommendation #59

In Canada and most nations, records are primarily catalogued for the government's convenience, not for the public's scrutiny. The only provincial FOI law that prescribes record management to assist applicants is that of Quebec, in Sec. 16, and this should be considered for a reformed B.C. *FOIPP Act:*

> 16. A public body must classify its documents in such a manner as to allow their retrieval. It must set up and keep up to date a list setting forth the order of classification of the documents. The list must be sufficiently precise to facilitate the exercise of the right of access.

(This factor is present in the FOI laws of many nations also, such as with India's law: "4. Every public authority shall – (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act." The African Union's *Model Access Law* of 2013 prescribes that officials must "arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification" and "keep all information in its possession in good condition and in a manner that preserves the safety and integrity of its contents.")

***Recommendation #60**

- Include a provision in the B.C. *FOIPP Act* that all emails and communications sent from the personal email addresses and from the work email addresses of employees, directors,

officers, and contractors, and which relate directly or indirectly to workplace matters, are subject to the access law.

- Ban public officials using private email accounts, personal cell phones and tablets for carrying out government business. The B.C. *FOIPP Act* should be amended to include electronically stored information (e.g. voice-mail, E-mail, computer conferencing etc.) explicitly in the definition of recorded information, and to give requesters the right to request a record in a particular format if it exists in various formats.

- Legislation should advise access officials to keep up-to-date on the latest information and communication technologies, so as to watch for and thwart any back-channel evasions of FOI obligations.

(The federal Commissioner released a policy statement which expressly includes any form of instant messaging under the definition of records. This applies to phone-based messaging services like SMS and BBM, online messaging services like Facebook, as well as dedicated messaging apps like WhatsApp. Yet in this digital age, FOI law and policy always struggle to keep up with lightning-paced technological changes.)

Recommendation #61

A common tool of FOI avoidance is for Canadian officials and politicians to use post-it sticky notes to avoid a paper trail - an intolerable breach of the public interest.

Amend the B.C. *FOIPP Act* to add this wording of British Columbia's FOI regulations, which state that any marginal note made upon a document transforms that record into "a new record," and a separate copy is made of it for FOI applicants: "Marginal notes and comments or 'post-it' notes attached to records are part of the record, not separate transitory records. If the record is requested, such attached notes are reviewed for release together with the rest of the record."

Recommendation #62

In some jurisdictions, records may not be destroyed after an FOI request for them has been received, even if they had already been scheduled for destruction. For instance, in Washington state's FOI law, "If a requested record is scheduled shortly for destruction, and the agency receives a public records request for it, the record cannot be destroyed until the request is resolved. Once a request has been closed, the agency can destroy the requested records in accordance with its retention schedule." This measure is advisable for the B.C. *FOIPP Act*.

Recommendation #63

The FOI statute of Ecuador commendably goes one step better, wherein "information cannot be classified following a request." This measure is advisable for the B.C. *FOIPP Act*.

Recommendation #64

Federal information commissioner John Grace issued a sharp rebuke to the oral government concept, noting its origins: "The misguided effort to avoid scrutiny by not making records is driven by ignorance of the law's broad exemptive provisions."

This last point is crucial, and the solution to such ignorance is to begin an education program for all officials and public servants about how the B.C. *FOIPP Act* exemptions work, exactly what information can be legally withheld, and why the FOI law need not be so feared.

The Information and Privacy Commissioner's Powers

Recommendation #65

Under the federal *Access to Information Act* Sec. 31, applicants have within 60 days of receiving an unsatisfactory response from the public body, to appeal to the Information Commissioner about delays, exemptions, or any other issue. This 60 day limit should also set in the B.C. *FOIPP Act,* instead of its current 30 days. (The *ATI Act*'s limit was shortened in 2006 from a right to appeal within one year. Six months to appeal would be a fair compromise between the two, and this limit might be set in the B.C. *FOIPP Act.)*

The deadline to file an appeal of a FOIPP ruling to Judicial Review should also be doubled to 60 days (as the JR process can be complex and onerous to a layperson).

Recommendation #66

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

Recommendation #67

Amend the B.C. *FOIPP Act* to grant the Information and Privacy Commissioner the power to require public bodies to submit statistical and other information related to their processing of requests, in a form and manner that the Commissioner considers appropriate.

(The federal Commissioner well noted in 2021: "In Scotland, statistics are gathered every three months through a computer system rather than compiled once a year in an annual report; this allows them to promptly assess trends and institutions' performance. This method of data collection also makes it possible to take action quickly and as needed, something that is not possible in our current access regime." This is advisable for B.C.)

Recommendation #68

The B.C. Information and Privacy Commissioner should be given powers in the B.C. *FOIPP Act* to require systemic changes in government departments to improve compliance (as in the United Kingdom).

Response times

[**Background**: The most common initial FOI response time in other nations' FOI laws is two weeks – *half* the 30 day period allowed for the initial response in the B.C. *FOIPP Act*. Of 128 nations, 92 set an initial response time ranging from three to 21 days. For the extension limit, 58 nations set from three to 21 days, whereas 29 countries set 30 days. Some FOI laws also have penalties for delays, which the B.C. *FOIPP Act* needs.]

***Recommendation #69**

For the B.C. *FOIPP Act*, set a 20 day initial response limit for records – the standard in the FOI laws of Quebec, New Zealand, the United Kingdom and the United States. Also replicate the 10 day FOI extension limit in Quebec's statute.

Recommendation #70

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

***Recommendation #71**

The B.C. *FOIPP Act* should be amended to prohibit the use of any discretionary exemption if the department is in a deemed refusal situation due to delays. In this situation, it would be required to gain the approval of the Commissioner before withholding isnformation under mandatory exemptions (the standard in Mexico).

(At a minimum, Commissioner John Reid's 2002 report well advised that the *ATI Act* be amended to preclude reliance upon the policy advice and legal privilege exemptions [i.e., the B.C. *FOIPP Act*'s Sec. 13 and 14] in late responses. "It would have every bit as much force, without risking highly damaging disclosure, if it were restricted to loss of the ability to invoke [these two] sections in late responses. These two sections are discretionary and protect the internal, advice-giving process. A sanction so limited would pinch where the pinch is needed.")

Recommendation #72

Amend the B.C. *FOIPP Act* to mandate that when a department's response falls into deemed refusal (i.e., failure to meet lawful deadlines), it loses the right to collect fees, including any search, preparation, and copying charges.

Recommendation #73

Under no circumstances may a third party notification excuse the public authority from complying with the time periods established in the B.C. *FOIPP Act*.

Recommendation #74

For the B.C. *FOIPP Act*, implement this recommendation from *Observations and Recommendations* by federal Commissioner Carolyn Maynard, 2021: "The *[ATI] Act* should provide a clearer process for institutions that decide to have a consultation and set out a maximum length of time for consultations required in order to respond to access requests."

(This is necessary because, as Commissioner Maynard noted, as long as a consultation is under way, institutions generally will not respond to an access request, even though there is nothing to stop them from doing so under the *Act*. The OIC's investigations show that institutions rarely decide to disclose information without having a consultation when the information concerns other institutions. As a result, requesters are frequently denied timely access to requested records, in whole or in part.)

Recommendation #75

Amend the B.C. *FOIPP Act* so that where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, or for public health emergencies, a response must be provided within 48 hours. (This term appears in many nations' FOI laws, and in Afghanistan and Nepal such information must be provided within 24 hours.)

Recommendation #76

Whereas the worst delay bottleneck is often at the "sign off authority" levels and processes, these must be streamlined and simplified. Hence amend of the B.C. *FOIPP Act* to vest such authority at the lowest reasonable level, normally with the information officer if there is one.

On the extension of time limits, restrict the delegation of granting time extensions to a senior official, perhaps at Assistant Deputy Minister level, with the hopes of increasing the accountability for institutions' FOI performance.

Recommendation #77

Amend the B.C. *FOIPP Act* to state that information releases may never be delayed due to public relations concerns or consultations, such as pre-release "issues management" or "spin control" plans.

(Public relations staff need not be prohibited from being informed about B.C. *FOIPP Act* requests - in reality this could likely not be stopped anyways - but only if this process does not cause delays, or breach the applicant's privacy.)

Recommendation #78

Amend the B.C. *FOIPP Act* to state that records will be granted to applicants in staged releases if they request it. That is, if any portion of the information requested can be considered by the information officer within the time period specified, it must be reviewed and a response provided to the requester.

(The federal Treasury Board Secretariat in its *ATIA Review Task Force* report of 2002 advised that "Access to Information Coordinators be encouraged to offer to release information to requesters as soon as it is processed, without waiting for the deadline, or for all of the records to be processed." This right should be set in law, beyond encouragement.)

Recommendation #79

Repeal B.C. *FOIPP Act* Sec. 20, which allows the head of a government institution to refuse to disclose records to a requestor if the head predicts the material will be published by government within 60 days after the request is made.

(Sec. 20 can be misused as a game to buy extra time. An institution may delay a request for records on the basis of this section and, when just before that 60 day period expires, simple change its mind about publication and newly apply exemptions to the record. In 2015 the federal Information Commissioner advised the equivalent section of the *ATI Act* [its Sec. 26] be repealed.)

Recommendation #80

Yet if government does not which to repeal Sec. 20, there is a secondary option: Amend it to change the period from 60 days to 30 days after the request is received, and stipulate that if the record is not published within those 30 days, it must be released forthwith in its entirely with no portions being exempted.

Recommendation #81

Implement these measures advised by Information Commissioner Suzanne Legault (in *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, 2015):

> 3.5 - The Information Commissioner recommends that, in cases where a consulted party fails to respond to a consultation request, the consulting institution must respond to the request within the time limits in the Act.
>
> 3.6 - The Information Commissioner recommends that a third party is deemed to consent to disclosing its information when it fails to respond within appropriate timelines to a notice that an institution intends to disclose its information.

Recommendation #82

For the B.C. *FOIPP Act,* consider the limits set in Newfoundland's revised FOI law: "23. (1) The head of a public body may, not later than 15 business days after receiving a request, apply to the commissioner to extend the time for responding to the request." The time to make an application

and receive a decision from the commissioner does not suspend the period of time referred to here.

("That is a reasonable compromise between the need for some flexibility and the problem of abuse of extensions by public bodies," said the CLD's Toby Mendel on Newfoundland's law, "although I prefer the absolute limits found in many laws, i.e., 30 days plus another 30 and that's it.")

Recommendation #83

Amend the B.C. *FOIPP Act* to change the current 20 day request transfer limit to 5 days (as per the revised Newfoundland FOI law), or a maximum 10 days (as it was in the original B.C. *FOIPP Act)*. The head of the other institution must then reply within the remaining days up to the overall maximum of 30 days.

Recommendation #84

Amend the B.C. *FOIPP Act* to allow for rolling or continuing requests.

(Two provinces admit rolling requests. In Alberta's law: "9(1) The applicant may indicate in a request that the request, if granted, continues to have effect for a specified period of up to 2 years." The same right exists in Ontario's FOI law, Section 24(3).)

***Recommendation #85**

In November 2006 the B.C. information and privacy commissioner created a fine new "expedited inquiry" and "consent order" process to curtail delays, which works effectively today, and some equivalent of this should be prescribed in the B.C. *FOIPP Act*.

Recommendation #86

The B.C. *FOIPP Act* should be amended to require institutions to publicly report each year the percentage of access requests received which were in "deemed refusal" at the time of the response and to provide an explanation of the reasons for any substandard performance.

Recommendation #87

Persistent and excessive failures to respond to B.C. *FOIPP Act* requests within the time limits would be reflected in the reduced remuneration and bonuses of the head of the public body responsible for B.C. *FOIPP Act* compliance (such as deputy ministers).

Proactive Publication and Routine Release

Recommendation #88

The United Kingdom's FOI law, Section 19, imposes a duty on every public authority to adopt and maintain a "publication scheme," which must be kept current and approved by the Information Commissioner, and this rule should be established in British Columbia as well.

In its report on *Bill C-58*, the Senate recommended an amendment to *ATI Act* Sec. 91(1.1): "The [federal] Information Commissioner shall review annually the operation of Part 2, proactive

disclosure, and include comments and recommendations in relation to that review in her annual reports." This feature is advisable for the B.C. *FOIPP Act* as well.

Recommendation #89

In the B.C. *FOIPP Act*, Sec. 3(5)(a), "Part 2 does not apply to the following: (a) a record that is available for purchase by the public" - should be amended to read "(a) material available for purchase by the public if such material is available at a reasonable price and in a format that is reasonably accessible, as deemed by the Information Commissioner upon a complaint."

Recommendation #90

Proactive disclosure in the B.C. *FOIPP Act* or another law should mandate the publication of:

- both winning and losing contract bids, so the public can consider for itself the value of the award decisions
- all contracts, licences, permits, authorizations and public-private partnerships granted by the public body or relevant private body

Recommendation #91

The government should include within mandatory publication schemes a requirement that institutions proactively publish information about all grants, loans or contributions given by government, including the status of repayment and compliance with the terms of the agreement.

Recommendation #92

The proactive publication of public opinion polls and research might be mandated, but at the least, the B.C. *FOIPP Act* should be amended to state that that no *FOIPP* exemptions will be applied to results of public opinion research, and that complete listings of polls, and public opinion results, must be provided upon informal request by the public.

Recommendation #93

Amend the B.C. *FOIPP Act* to voice the principle set in the FOI *Code* of Wales (which is subject to the United Kingdom's FOI law) that states: "We will continuously seek opportunities to publish information unless it is exempt under this *Code*. We will publish the facts and factual analyses behind policy proposals and ministerial decisions, unless they are exempt under this *Code*."

(This positive spirit might be contrasted to that of Canada, where some officials file lawsuits to block FOI requests that could reveal facts and analyses related to policy advice.)

Recommendation #94

The B.C. *FOIPP Act* should include a proactive disclosure requirement for environmental enforcement information.

Recommendation #95

Mandate that government statistics and datasets – if all personal identifiers have been removed - cannot be withheld under any B.C. *FOIPP Act* exemption.

Recommendation #96

Amend the B.C. *FOIPP Act* to add a much longer list of records that must be routinely released or proactively published, on the examples of Article 19's *Model Freedom of Information Law* (2001), and those of many other nations and commentators.

> See *Appendix 2*, below, for some samples of records requiring proactive publication in the FOI laws of other nations.

Penalties

[**Preface**: One of the few good features of Bill 22 is the addition of Part 5.1, Offenses, most notably in Sec. 65.3: "A person who willfully conceals, destroys or alters any record to avoid complying with a request for access to the record commits an offence." Yet still more can be done, for the Centre for Law and Democracy notes that the *breadth* of subjects for sanctions is more important than the penalties' severity, *per se.*]

Recommendation #97

Implement the advice of the Information and Privacy Commissioner in his letter of Oct. 20, 2021 to the Minister of Citizens Services on the new Part 5.1:

"This is a step in the right direction, but it does not go far enough. The inappropriate destruction of records should be penalized anytime, not only when there is an access to records request in play. This should include oversight over destruction of records other than in accordance with approved disposal schedules, as is the case under Alberta's *FOIPP Act*."

Recommendation #98

Afghanistan's FOI statute (CLD-rated #1 in the world) is quite well rounded, and parts of it may be advisable for the B.C. *FOIPP Act*:

> Article 35. (1) The followings are recognized as violation of this law:
>
> 1 - Providing such information to the applicant that does not conform to the contents of information request form.
>
> 2 - Refusal of information to the applicant without justified reasons.
>
> 5 - Not providing requested information within the allocated timeframe.
>
> 7 - Lack of reporting by the Public Information Officer to the Commission within the specified timeframe.

Recommendation #99

On delays, for an amended B.C. *FOIPP Act*, we should consider the superb FOI law of India, whereby in Article 20(1), if the Information Commission decides that an FOI officer "has not furnished information within the time specified," it shall impose a fine for each day until the

information is furnished, up to a maximum amount. (Many other nations' FOI laws have this same feature.)

Recommendation #100

This principle should be adapted in the B.C. *FOIPP Act*: "Article 19 supports criminal penalties for those who obstruct access, but only where such penalties respect the basic criminal rule requiring mental, as well as physical responsibility (*mens reas*). We therefore recommend that this article be amended to provide for liability only where the obstruction was willful or otherwise done with the intention of obstructing access."

Recommendation #102

India's FOI law penalizes those have knowingly given out incorrect, out-of-date, incomplete or misleading information, and this may be advisable for the B.C. *FOIPP Act.*

Recommendation #103

Implement this principle of Transparency International, in *Tips for the Design of Access to Information Laws*, 2006:

"Sanctions should penalize the institutions that have failed to respond to requests for information, along with the heads of these agencies, to avoid the possibility of individual, lower rank civil servants being penalized. The burden of responsibility should rest with those with the power to make change."

Recommendation #104

In Mexico's fine FOI law, officials can be penalized for "fraudulently classifying information that does not fulfill the characteristics indicated by this Law." The FOI law of Ukraine also imposes penalties for "ungrounded categorization of information as restricted access [classified] data."

(Such a principle would be welcome in the B.C. *FOIPP Act*, e.g., if an official deliberately misclassifies cabinet records to exclude them from the *Act*'s scope.)

Recommendation #105

The *B.C. FOIPP ACT* should make it clear that "creative avoidance" practices such as these and others are prohibited:

- Stonewalling, i.e., incorrectly claiming that records do not exist when they do; or not searching properly and then claiming documents cannot be found

- Changing the title of a record sought by an FOI applicant, sometimes after a request for it is received, then wrongly telling the applicant "we have no records responsive to your request." (This has occurred in Canada.) The law should make it make it absolutely clear it is only the record's subject matter that counts, not the record's title *per se*.

- Interpreting the wording of an applicant's request too narrowly, or even altering it, and then replying to the agency's re-worded version

Recommendation #106

In regards to duty to document, draft milder penalties for not creating records, and for not maintaining records properly.

See *Appendix 3* below on the wide scope of penalties in Mexico's FOI law.]

Exemptions, harms tests, time limits – general reforms

[**Background**. Several B.C. *FOIPP Act* exemptions lack explicitly-stated harms tests and so are known as "class exemptions," a situation that falls seriously short of world FOI standards. The *B.C. FOIPP Act*'s purpose clause states that one goal is "specifying limited exceptions to the right of access," but when exemptions lack a harms test, this limitations purpose is sometimes defeated. As the human rights organization Article 19 has noted, FOI statutory exemptions should be narrowly drawn, should be based on the content rather than the type or name of the record, and should be time-limited.]

Recommendation #107

Amend the B.C. *FOIPP Act* to state: "The right to refuse information only lasts for the period in which the risk of harm from disclosure remains live, or for the number of years set for each exemption, whichever occurs first."

(This may be ideal phrasing for FOI exemptions, as it ensures the best of both worlds. With the first option, the topic sensitivity might expire long before a set time limit and so the records should be opened. Yet even if they should, if a recalcitrant agency denies this and stubbornly resists in court for years, then the second option of the fixed time limit would remain, as it does now, as a default catch-all net. Also consider the terms of the Czech FOI law: "The right to refuse information only lasts for the period, in which the reason for refusal lasts. In justified cases the subject will verify if a reason for refusal still lasts.")

Recommendation #108

The B.C. *FOIPP Act* should be amended to prescribe that exemptions cannot be generally applied to withhold information that has already been published - subject to a very few special harms exceptions.

(This is advised because there are examples of agencies invoking discretionary FOI exemptions to withhold information published in old newspaper clippings, and data already posted on a company's website. Yet common sense indicates that if harms could have resulted from such information release, these damages most likely would have occurred during its first, "informal" publication, as it was "road-tested"; if they did not, then fears of such harms resulting from a second, formal release via FOI are almost certainly groundless.)

Recommendation #109

Place in the B.C. *FOIPP Act* these terms from Article 19's *Principles of Freedom of Information Legislation*, 1999, endorsed by the United Nations:

> Principle 4. Exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests. A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test.
>
> > (1) the information must relate to a legitimate aim listed in the law;
> >
> > (2) disclosure must threaten to cause substantial harm to that aim; and
> >
> > (3) the harm to the aim must be greater than the public interest in having the information

Recommendation #110

Add to above terms this clause from Mexico's FOI law, Article 104, III: "The limitation is consistent with the principle of proportionality and is the least restrictive means available to avoid harm."

Recommendation #111

Add a general provision at the beginning of the exemptions part of the B.C. *FOIPP Act* to oblige heads of institutions to use their discretion in favour of access and openness, not refusal.

Also consider adapting the stronger default right to records present in Finland's FOI law as compared to the B.C. *FOIPP Act*: "1.1 Official documents shall be in the public domain, unless specifically otherwise provided in this *Act* or another *Act*."

Recommendation #112

Implement this worthy proposal from the federal Treasury Board Secretariat's *ATIA Act Review Task Force* report, 2002:

"4-1. The Task Force recommends that guidelines be issued on how to apply discretionary exemptions by: exercising discretion as far as possible to facilitate and promote the disclosure of information; weighing carefully the public interest in disclosure against the interest in withholding information, including consideration of any probable harm from disclosure, and the fact that information generally becomes less sensitive over time; and having good, cogent reasons for withholding information when claiming a discretionary exemption."

Recommendation #113

The B.C. *FOIPP Act* should make clear that officials may not mingle exempt and non-exempt records together, then claim an exemption for them all (for example, wrongly placing records into files of cabinet documents).

Recommendation #114

Establish an expert independent panel of academics, historians, journalists, librarians, and representatives of the B.C. Archives, the OIPC, etc., to advise and report upon [1] the de-classification of historical records, and [2] the ideal time limits for each B.C. *FOIPP Act* exemption. These could be two separate panels.

(Several nations' FOI laws simply allow for all material prior to a certain historical point to be released, and this could be considered for the B.C. *FOIPP Act*. Some nations also release certain older records proactively at a set time without FOI requests; for instance, Britain sends cabinet records to the National Archives for public viewing under "the 30 year rule," an ongoing tradition that predated the passage of its FOI law.)

Recommendation #115

Consider the proposal in *A Call for Openness*, the report of the MPs' Committee on Access to Information (2001) for the B.C. *FOIPP Act* - **"**We recommend that the *Access to Information Act* be amended to include a 'passage of time' provision requiring institutions to routinely release records under their control 30 years after their creation. This provision would override all exemptions from release contained in the *Act.*"

Other Topics

Recommendation #116

The whistleblower protection Sec. 30.3 of the B.C. *FOIPP Act,* and the B.C.'s *Public Interest Disclosure Act (PIDA)* of 2018, contain many helpful features.

Yet add this statement within the B.C. *FOIPP Act*: "Protection from civil and criminal liability: Any person who grants or discloses information in good-faith reliance on provisions of the B.C. *FOIPP Act* shall be protected from any and all civil and criminal liabilities, even if it is later determined that the information was in fact exempted. Similar protection shall be accorded all persons that receive information pursuant to this *Act.*" Consider expanding the protection to "anything done in good faith in the performance of the *Act*."

Privately survey all B.C. FOIPP staffers to inquire what they believe would be the best whistleblower protection measures, then implement what the majority advise.

(See B.C. FIPA report *Best Practices in Whistleblower Legislation,* by Carroll Anne Boydell*, 2018, at* https://fipa.bc.ca/best-practices-in-whistleblower-legislation-an-analysis-of-federal-and-provincial-legislation-relevant-to-disclosures-of-wrongdoing-in-british-columbia/)

Recommendation #117

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

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

Recommendation #118

State in the B.C. *FOIPP Act* that government and agencies may not invoke the rationale of "out of scope" - or any equivalent term - to withhold any part of any record requested under the B.C. *FOIPP Act*. Records or parts of records may only be withheld if they fall under an exemption in the *Act*, not if officials assert they fall outside the request's scope, or the *Act*'s scope.

(This latter practice has occurred, prior to an OIPC order of Dec. 2011 which forbade it. See https://thetyee.ca/Blogs/TheHook/2011/12/08/Govt_Cant_Hide_Ministers_Records/ The OIPC also ruled on June 19, 2015 that topic headings do not qualify for Sec. 12.)

Recommendation #119

Delete B.C. *FOIPP Act* Sec. 22.1. Disclosure of information relation to abortion services (a section unique in the FOI world). Such informational harms are already prevented by other exemptions.

***Recommendation #120**

The Federal Court stated that Ottawa can no longer charge fees for the search and processing of electronic government documents covered under the *ATI Act*, per the 2015 ruling of Justice Sean Harrington. This principle should be set in law in the B.C. *FOIPP Act.*

Recommendation #121

Extend the free time "spent locating and retrieving a record" in B.C. *FOIPP Act* Sec. 75(1)(b)(i) from the current 3 hours up to 5 hours (which is the standard in the federal *ATI Act*).

Recommendation #122

Amend the *Act* to establish that an applicant who makes a formal access request has the right to anonymity throughout the entire process, as in the Newfoundland FOI law. Add a privacy protection clause in the B.C. *FOIPP Act* to state that an applicant's identity must not be revealed within government without a strict need to know (for example, to locate the records the applicant seeks that include his or her name, or with one's consent).

Recommendation #123

Implement in the B.C. *FOIPP Act* the advice of federal Information Commissioner John Reid's 2002 report, that the *ATI Act* should be amended to give a requester the right to request

information in a particular format; that departments should be allowed to deny the request on reasonable grounds, but any refusal should be subject to review by the Information Commissioner.

His proposal to create *ATI Act* regulations on these matters is also advisable for the B.C. *FOIPP Act*:

"Act and regulations do not, however, mention the conversion of data from one format into another. If requesters are asked to pay for these conversions (which can often be done simply and automatically), will subsequent requesters have to pay again? Or will a department, having accomplished the conversion once, be required to maintain the data in the converted format for future requests? Would documents printed on demand from an electronic record be held in anticipation of a future request? No regulations are in place to govern on-line or remote access to electronic information."

Recommendation #124

Amend the B.C. *FOIPP Act* to permit a government institution to group all requests received from a requester (within 30 days of receipt of the initial request) on the same subject matter. When grouping has been employed, it is appropriate that the requester be so informed in the extension notice.

Recommendation #125

For B.C.'s directors/managers of information and privacy (DMIPs), implement the advice of the 1987 MPs' Justice Committee *Open and Shut* report - which stated that the time was long past due to professionalize their role - to [1] classify them as part of departmental senior management group, [2] make them a part of departmental executive committees, [3] give them direct reporting relationships with deputy heads of departments, [4] develop a uniform set of job descriptions and set of expectations for them, [5] ensure that they have completed standard, formal training in their discipline and [6] surround them with a leadership culture which does not penalize them for making the access law effective within their institutions.

Recommendation #126

Add a clause to the B.C. *FOIPP Act* to state that B.C. officials may never assert "crown copyright" regarding records released in response to B.C. *FOIPP Act* requests. Follow the lead of the American *Copyright Act,* which states that no government records can be copyrighted.

(For years, B.C. ministries would attach notices inside packages of documents mailed to FOI applicants, warning that: "These records are protected by copyright under the federal *Copyright Act*, pursuant to which unauthorized reproduction of works is forbidden." In 2008, Stanley Tromp complained to B.C.'s Privacy Commissioner, who reviewed the issue. In a letter to Tromp of June 1, 2009, he stated: "Government has decided to cease including copyright notices in access to information disclosures." While this voluntary move is welcome, there is no guarantee the problem could not arise again someday, hence it needs to be prohibited by law.)

Recommendation #127

Implement a policy directive for the department that administers the B.C. *FOIPP Act* system to educate and promote the access process to the general public. This might also be done by the B.C. information and privacy commissioner's office, which has a right to "inform the public about this Act" in Sec. 41(1)(c) of the *Act;* if so, government must provide adequate funds for this work, and it would be a dedicated, stand-alone part of the Commissioner's budget.

Recommendation #128

The legal system for B.C. *FOIPP Act* cases needs to be made more fair and equitable for all. The *Act* should include a bar on costs being awarded against a requestor if a third party appeals a decision to B.C. court and the requestor wishes to appear as a party in the court proceeding.

We should also seek wider grounds to bar court costs in B.C. *FOIPP Act* cases from being levied against a citizen applicant or lay litigant, considering the large imbalance of power and resources. If such costs are assessed against an applicant, he or she could be financially ruined, which is why some applicants dare not engage in FOI litigation. It is especially unwarranted if important legal or Constitutional FOI issues are in dispute.

Recommendation #129

The relevant statute should state that the usage of in-camera affidavits in B.C. *FOIPP Act* court cases should be curtailed to the bare minimum necessary and justifiable.

(Inequity arises when FOI applicants, who are sometimes lay litigants, voice all their arguments in the open, where these can be parsed and shredded by expert Crown lawyers, at unlimited public expense; by contrast, the agency too frequently presents its arguments and much evidence with in-camera affidavits, which the applicant cannot view or challenge, and hence must prepare reply submissions to these in the dark.)

Recommendation #130

One feature of American FOI litigation worth contemplating for our B.C. *FOIPP Act* is the "Vaughn Index." This is a document prepared by agencies that are opposing disclosure under the U.S. *FOIA*. It must describe each document or portion that has been withheld and provide a detailed justification of the agency's grounds for non-disclosure. This is intended to help "create balance between the parties," said one U.S. court.

Recommendation #132

Add a clause to the B.C. *FOIPP Act* to state that access to government information is to be regarded in the province as "a human right."

(There is a growing body of authoritative statements by international human rights bodies and courts to the effect that FOI is a fundamental human right. Such right of access is entrenched in human rights law through decisions of the Inter-American Court of Human Rights and the European Court of Human Rights, as well as the UN Human Rights Committee's 2011 *General*

Comment on Article 19 of the International Covenant on Civil and Political Rights, to which Canada is a party.)

Recommendation #133

Consider an amended broader purpose clause for the B.C. *FOIPP Act*.

(The stated principles in the purpose clause are extremely important, for these can provide guidance to commissioners or judges in writing their rulings. Other factors could be added to the B.C. *FOIPP Act's* existing Sec. 2; in other nations, these include: accessing information necessary to investigate crimes against humanity, human rights violations, crimes of economic damage to the state, environmental harms, and reducing corruption and inefficiency. The purpose clauses in the FOI laws of Alberta and Nova Scotia have good features.)

Recommendation #134

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

Recommendation #135

Create a "British Columbia Freedom of Information Forum." This would candidly and respectfully discuss systemic FOI practices and problems, and pragmatically attempt to resolve these.

This would be a council of B.C. *FOIPP Act* applicants (such as journalists, lawyers, FOI advocates, academics) and senior government officials (such as DMIPs, deputy ministers, chief information officers, and members of the OIPC), which would meet semi-formally once a year to begin and then perhaps more often, by teleconferencing if need be. Its low key work would differ from a (sometimes politicized) Legislative law review each six years, and focus far more on FOI practice than law reform *per se*.

This Forum could be organized by a university department (e.g. sociology, political science), law school, journalism school, or association of FOI professionals, and it might be chaired by a neutral third party such as a professor, retired judge or ombudsperson. The United States has such an entity: the *FOIA Advisory Committee*, chaired by OGIS - https://www.archives.gov/ogis/foia-advisory-committee Its records would be public via FOI, of course, because it performs "a public function."

==========

Appendix 1 – The Dutch FOI protection for policy analysts

For the B.C. *FOIPP Act* Sec. 13, consider the Dutch legal protection for policy analysts. In the Canadian public service, civil servants "who even cast the slightest doubt on the wisdom of the government's policy are severely reprimanded," wrote one author. The Netherland's FOI law takes account of this concern, with a unique provision:

> 11. 1. Where an application concerns information contained in documents drawn up for the purpose of internal consultation, no information shall be disclosed concerning personal opinions on policy contained therein.
>
> 11. 2. Information on personal opinions on policy may be disclosed, in the interests of effective, democratic governance, in a form which cannot be traced back to any individual. If those who expressed the opinions in question or who supported them agree, information may be disclosed in a form which may be traced back to individuals.
>
> 11. 3. Information concerning the personal opinions on policy contained in the recommendations of a civil service or mixed advisory committee may be disclosed if the administrative authority directly concerned informed the committee members of its intention to do so before they commenced their activities.

The initial Dutch exception is phrased in extremely broad terms, and is also mandatory. But its clawbacks (or exceptions to the exception) are indeed interesting as an option, hence worth considering, perhaps with a caveat about the breadth of the initial exception in this area. In the Netherlands under these terms, much useful policy information could still be released, which is better than no release at all. If included in the B.C. *FOIPP Act*, this could relieve some fears of provincial government analysts distressed at being identified, with the feared effect on their careers.

Appendix 2 – Several proactive publication rules of other nations

Pro-active publication and routine release are amongst the FOI issues on which the world has left Canada farthest behind.

Most other nations from Albania to Zimbabwe prescribe such information release in sections of their FOI statutes, and many of these are exhaustive, sometimes running to over 400 words each; the longest is that of Kyrgyzstan with 1,800 words. As well, proactive publication can also be mandated in statutes other than the FOI law. Below are just a few.

• All statutes and internal regulations must be published (Columbia and other nations)

• Courts and other bodies are required to publish the full texts of decisions, and the Congress is required to publish weekly on its web site all texts of "projects of laws" (Ecuador)

• Public bodies must publish information on a government activity's influence on the environment (Armenia)

• In Serbia, the National Council is required to publish the data of sessions, minutes, copies of acts and information on the attendance and voting records of MPs.

• The state must publish contracts including a list of those who have failed to fulfill previous contracts, budgets, results of audits, procurements, credits, and travel allowances of officials (Ecuador); and information relating to public tenders (Croatia)

• In Estonia, national and local governments must post online: statistics on crime and economics; information relating to health or safety; budgets and draft budgets; information on the state of the environment; and draft acts, regulations and plans including explanatory memorandum. They are also required to ensure that the information is not "outdated, inaccurate or misleading" (The Estonian FOI law cites 32 types of public records to be published in Section 28)

• In Brazil, government must publish on the internet a list of the information which has been declassified in the last 12 months, and a list of information classified in each level of secrecy

• In Palestine's draft FOI bill, Art. 8 requires public and private "industrial institutions" to publish six-monthly reports providing information on the location, nature and associated hazards of toxic materials used by them, the volume of materials released into the environment as a result of manufacturing processes and waste disposal methods and mechanisms they use.

Appendix 3 - FOI Penalties: the wide scope of Mexico's law

[The freedom of information law of Mexico - RTI-ranked #2 in the world by the CLD-AIE - is an outstanding model to follow, in many ways. Although it is not clear from below what the exact penalties would be, the scope of the subjects is the widest I have seen in an FOI statute so far]

Article 206. The Federal Act and those of the States will set forth as penalty causes for breach of its obligations under the terms of this Act, at least the following:

I. The lack of response to requests for information within the time specified in the applicable regulations;

II. Acting with negligence, willful misconduct or bad faith in the substantiation of requests regarding access to information or by not disseminating information concerning the transparency obligations under this Act;

III. Not meeting the deadlines under this Act;

IV. Using, removing, disclosing, hiding, altering, mutilating, destroying or rendering useless, totally or partially, without legitimate cause, according to a relevant authority, the information in the custody of the regulated entities and their Public Servants or to which they have access or knowledge by reason of their employment, office or commission;

V. Delivering incomprehensible, incomplete information, in an inaccessible format or a mode of shipment or delivery different from the one requested by the user in his request for access to information, responding without proper grounds as established by this Act;

VI. Not updating the information corresponding to the transparency obligations within the terms set forth in this Act;

VII. Intentionally or negligently declaring the lack of information when the regulated entity should generate it, derived from the exercise of its powers, duties or functions;

VIII. Declaring the lack of information when it wholly or partly exists in its archives;

IX. Not documenting with intent or negligence, the exercise of its powers, duties, functions or acts of authority in accordance with applicable regulations;

X. Performing acts to intimidate those seeking information or inhibit the exercise of the right;

XI. Intentionally denying information not classified as secret or confidential;

XII. Classifying as confidential, intentionally or negligently, the information without it meeting the characteristics indicated in this Act. The penalty shall apply when there is a prior ruling by the Guarantor Agency, which is final;

XIII. Not declassifying information as secret when the reasons that gave rise thereto no longer exist or have expired, when the Guarantor Agency determines that there is a cause of public concern that persists or no extension is requested by the Transparency Committee; XIV. Not meeting the requirements laid down in this Act, issued by the Guarantor Agencies, or

XV. Not complying with the resolutions issued by the Guarantor Agencies in the exercise of their functions. The Federal Act and those of the States shall establish the criteria to qualify the penalties, according to the seriousness of the offense and, where appropriate, the economic conditions of the offender and recidivism. Likewise, they shall include the type of penalties, procedures and terms for implementation. The penalties of an economic character may not be paid with public funds.

==========

CANADIAN SOURCES

• *Open and Shut: Enhancing the Right to Know and the Right to Privacy*. Report of the MPs' Standing Committee on Justice and Solicitor General on the Review of the *Access to Information Act* and the *Privacy Act*. Ottawa, 1987.

• *The Access to Information Act: A Critical Review. Ottawa*. A report prepared for the Information Commissioner of Canada by the consultants Sysnovators Ltd. of Ottawa, 1994. https://www.humanrightsinitiative.org/programs/ai/rti/implementation/monitor/critical_review_1994_canadian_info_comm.pdf

• *Toward a Better Law: Ten Years and Counting*. By John Grace, Information Commissioner. Recommendations for *B.C. FOIPP ACT* reform, in Commissioner's 1993-94 Annual Report

• *Blueprint for Reform*. By John Reid, Information Commissioner. Recommendations for *B.C. FOIPP ACT* reform, Commissioner's 2000-01 Annual Report. Ottawa, 2001. https://publications.gc.ca/collections/Collection/IP20-1-2001E.pdf

• *A Call for Openness*. Report of MPs' Committee on Access to Information, chaired by Liberal MP John Bryden. Ottawa, 2001

• *Access to Information: Making it Work for Canadians.* Report of the Access to Information Review Task Force. Ottawa, 2002. Appended with 29 research reports. https://publications.gc.ca/collections/Collection/BT22-83-2002E.pdf

• *Response to the Report of the Access to Information Review Task Force*, by John Reid, Information Commissioner, 2002. (This is by far the most detailed and comprehensive pro-transparency list of *B.C. FOIPP ACT* reforms, hence indispensable reading - especially on Sec. 69, cabinet records.) https://www.oic-ci.gc.ca/en/resources/reports-publications/response-report-access-information-review-task-force-special-report

• *Bill C-201 An Act to amend the Access to Information Act and to make amendments to other Acts*. Introduced by NDP MP Pat Martin, 2004

• *A Comprehensive Framework for Access to Information Reform: A Discussion Paper.* Justice Department of Canada, Ottawa, 2005. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/atip-aiprp/ati-aai/ati-aai.pdf

• *Access to Information Act - Proposed Changes and Notes*. Draft bill by John Reid, Information Commissioner, Ottawa, 2005

• *Stand Up For Canada*. Federal election platform statement of the Conservative Party of Canada, 2006

• *Restoring Accountability*. From the Final Report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities, by Justice John H. Gomery. Ottawa, 2006. https://publications.gc.ca/site/eng/287381/publication.html?wbdisable=true

• *Strengthening the Access to Information Act. A Discussion of Ideas Intrinsic to the Reform of the Access to Information Act*. Government of Canada discussion paper, Ottawa, 2006. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/atip-aiprp/B.C. FOIPP Act -lai/B.C. FOIPP Act -lai.pdf

• *Bill C-556, Act to amend the Access to Information Act*. Introduced by Bloc Quebecois MP Carole Lavallée, 2008

• *Strengthening the Access to Information Act to Meet Today's Imperatives.* By Robert Marleau, Information Commissioner, 2009. https://www.oic-ci.gc.ca/en/resources/reports-publications/strengthening-access-information-act-meet-todays-imperatives

• *The Access to Information Act: First Steps Toward Renewal.* Report of the Standing Committee on Access to Information, Ethics and Privacy. Chaired by Liberal MP Paul Szabo, 2009 https://www.ourcommons.ca/DocumentViewer/en/40-2/ETHI/report-11

• *Failing to Measure Up: An Analysis of Access to Information Legislation in Canadian Jurisdictions*. The Centre for Law and Democracy (Halifax), 2012. https://sitka.bibliocommons.com/v2/record/S49C126602784

• *The Access to Information Act and Proposals for Reform.* A summary for the Library of Parliament by Kristen Douglas, 2005, rev. 2012. https://publications.gc.ca/site/fra/426825/publication.html

• *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*. By Suzanne Legault, Information Commissioner, 2015. https://www.oic-ci.gc.ca/sites/default/files/userfiles/files/eng/reports-publications/Special-reports/Modernization2015/OIC_14-418_Modernization%20Report.pdf

• *Failing to Strike the Right Balance for Transparency: Recommendations to improve Bill C-58*. By Suzanne Legault, Information Commissioner, 2017. https://www.oic-ci.gc.ca/en/resources/reports-publications/failing-strike-right-balance-transparency

• Senate of Canada, *Observations to the thirtieth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-58*), 2019. https://sencanada.ca/en/committees/report/69354/42-1

• *Fallen Behind: Canada's Access to Information Act in the World Context,* by Stanley Tromp. 2nd revised edition. BC Freedom of Information and Privacy Association (FIPA), Vancouver, 2020. https://fipa.bc.ca/wp-content/uploads/2020/05/2020_FallenBehind.pdf

• *A Declassification strategy for national security and intelligence records.* A report for the Information Commissioner by Wesley Wark, 2020. https://www.oic-ci.gc.ca/en/resources/reports-publications/declassification-strategy-national-security-and-intelligence-records

• *Information Commissioner on the Government of Canada's Review of the Access to Information Regime*, by Carolyn Maynard, Information Commissioner, 2021. https://www.oic-ci.gc.ca/en/resources/reports-publications/observations-and-recommendations-information-commissioner-review

==========