

## **B.C. NDP Statements of Freedom of Information, 2006-2021**

[1]

**(From news story: *Dix, Farnworth pledge reforms to Freedom of Information Act; candidates commit to reducing fees, releasing more records and creating an open data portal on the Internet.* By Chad Skelton, *Vancouver Sun*, Feb. 15, 2011)**

B.C. NDP leadership candidates Adrian Dix and Mike Farnworth both promise to make major changes to the province's Freedom of Information laws if elected premier, including reducing fees and narrowing the grounds on which government can withhold records. Dix and Farnworth both agreed the FOI law is in urgent need of reform. "Currently, the legislation remains too vague and open-ended, allowing the government to exploit this lack of clarity to avoid public disclosure whenever possible," Farnworth wrote.

Under the current law, government can withhold records considered "policy advice or recommendations," an exemption that has been applied to large volumes of records. Dix wrote the section should be amended to make it clear certain records should always be released, whether policy advice or not, such as scientific analyses and investigation reports.

Horgan wrote that he supported some changes to the Act, such as making university spinoff companies subject to FOI requests. But he was less enthusiastic about reforming the Act's policy-advice exemption, saying it had "stood the test of time."

[2]

Hansard, April 1, 2008

### **NDP MLA Adrian Dix (the current Heath Minister):**

There's also a difference between an opposition party that introduced freedom-of-information and privacy laws in British Columbia and got them passed through the Legislature, and a government that on 16 occasions.... Sixteen changes they've made to make freedom-of-information requests more time-consuming and more difficult. That's a difference.

You know what? I say this to the government: You never think this when you're in government, but sometimes political parties are in government, and sometimes they're in opposition. It is dangerous for a government to act towards a fundamental law of our province, freedom of information, as if they're going to govern for a thousand years.

As the member for Columbia River–Revelstoke eloquently said: "This is beyond partisanship." One day we'll be over there, and they'll be making FOI requests. We should respond to those FOI requests, and we should respect the spirit of a law that says you should have access to that information.

Instead, what we have is a government that routinely uses the FOI Act and Section 13 in particular of that act to deny the public of British Columbia - MLAs, the media, citizens - the right to information they'd otherwise get.

[3]

Hansard, April 1, 2008

**NDP MLA Mike Farnworth (the current Solicitor General):**

That is a government obsessed by secrecy. That is a government afraid of the advice that it's been given. That is a government afraid to let the public know what is going on. The only positive thing in that is that I know my eyes are not getting any weaker. What it says is that this is a government that is far too secretive.

Whiteouts. In fact, I would not be surprised if the whiteout line in the budget has significantly increased since this government took power. I say that with some justification, because when you look at this government's record on freedom of information, you see a startling fact, and that is that they have made more than 16 changes to FOI to make it more time-consuming and more difficult.

More expensive for ordinary citizens, more expensive for small business, more expensive for non-governmental organizations, more expensive for the media, more expensive all around. Is it because there are financial considerations? Well, the act did make for what would be considered normal. No. "Excessive" is the word that people have used. "Almost usurious" are other words that have been used to describe the way in which this government has used financial costs to restrict the ability to access freedom of information.

Clearly, the actions of this government since they have taken office completely defeat the intent of freedom-of-information legislation. It's supposed to be sunshine legislation, to let the light of public scrutiny shine in. We know that they certainly appreciated it when they were in opposition. They loved it every day they were in opposition. But, by God, they sure couldn't wait to draw the curtains shut when they became government, and that's a shame.

[4]

Hansard, May 5, 2014

**NDP MLA George Heyman (the current Environment Minister):**

In this time when British Columbians and people across Canada are becoming more cynical about politics, more alienated from government, I think one of the tools we have at our disposal to reverse that unfortunate trend, to give people back some sense that we in this chamber and people in government are acting on their behalf, is to respect their right to information. . . .

I could go on, and the litany goes on, but the answer to this issue is to strengthen the act on the recommendations of the Information and Privacy Commissioner, which she has made on

numerous occasions, both to allow greater access to information and to ensure documents are kept. We on this side of the House would, in fact, do that.

[5]

Hansard, May 16, 2016

**NDP MLA Doug Routley:**

The freedom-of-information law, introduced by the NDP government in 1992 and adopted unanimously by this House, is meant to be a regulatory backstop to a culture of transparency. Instead, we have seen a steady and deliberate undermining of freedom of information and, consequentially, democratic integrity.

The information of government belongs to the people of B.C. The information of what our government has done, how it was done and who decided is essential to a functioning, effective democracy. We have to see it to judge it. The FOI laws of the province have been weakened many times by government's amendments, and the provisions stretched to favour secrecy over openness.

As the transparency of government is blurred and blindfolded, the backstop of FOI law becomes the point of conflict. To repair the damage done to faith in government's integrity, we need to significantly toughen and expand FOI law. But more than that, we require the shift in culture that begins and ends in the Premier's office.

(Hansard, March 22, 2010)

When I try to describe to people which ministry I'm critic of, I often say, "Well, I'm critic of the ministry of secrecy, surveillance and propaganda," because the FOI Act has essentially become the secrecy act of government.

[6]

Hansard, May 26, 2008

**NDP leader Carole James:**

We've seen freedom-of-information laws ignored and disdained by this Premier. We see new bureaucracies created with no oversight, little public accountability.

[7]

Hansard, April 1, 2008

**NDP MLA Norman Macdonald:**

The billions of dollars that are spent of the people's money, the billions of dollars that government spends of your money.... How that money is spent is going to be fully scrutinized. The policies that the government has the abilities to put in place, that restrict our lives, that put boundaries around what we can do, are thoroughly, thoroughly challenged. . . .

But we as the public, we as the opposition, need to know all that we can to do our job properly, and freedom-of-information legislation is an important part of that. If it errs, it needs to err to the side of openness.

[8]

Hansard, March 8, 2007

**NDP MLA Guy Gentner:**

Freedom of information helps to ensure that a government is operating with the informed consent of its citizens. That's what it's all about. Power is information, and without that information we are powerless.

Freedom of information exists for the purpose of making public institutions transparent and accountable to the public. When all else fails it is a citizen's best hope to pierce the veil of obstruction that so often hides the work of government and to find out what is really going on. I don't understand the reluctance of this government to open its arms and say to its populace: "We are willing to allow you to see what is really going on."

**NDP MLA Maurine Karagianis:**

I find it quite laughable, because if I didn't laugh, I would probably want to cry for the inability of this government to follow through on the promise of openness and accountability

Again, as part of government's endeavours to constrain the flow of information and to prevent people from clearly seeing and understanding the thread of activities that have taken place, it has become more and more difficult to even get information under the Freedom of Information and Protection of Privacy Act. Often documents have arrived back in my hands so severely severed as to actually be a waste of paper.

[9]

**(From news story: *Key files hidden or destroyed, NDP says; B.C. government accused of flouting information law.* By Lindsay Kines, *Victoria Times-Colonist*, April 30, 2015)**

The NDP accused the Liberals Wednesday of flouting B.C.'s FOI law by withholding or destroying important government records. For the second straight week, the Opposition produced documents that show one senior official denying the existence of records only to have another person release them.

NDP Leader John Horgan, whose party highlighted three similar cases last week, said the documents paint a disturbing picture of increasing government secrecy. "I think all British Columbians should be concerned when their government hides things from them," he said. "The whole point of having access to information is so we can all make reasonable judgments about the effectiveness or ineffectiveness of our political leadership."

[10]

**Then-MP Murray Rankin - current B.C. NDP MLA and Minister for Indigenous Relations – writing on the *Access to Information Act*, the federal equivalent of B.C.'s *FOIPP Act*. From his preface to the book *Fallen Behind*, by Stanley Tromp, 1<sup>st</sup> edition, 2008:**

Perhaps sadly, this book places Canada in the global context and demonstrates just how far behind other countries Canadians are in providing a meaningful right of access to their government's public records. Reading this book will no doubt make you angry: why do Canadians tolerate this state of affairs?

For legislation like the *ATIA*, which the courts have affirmed is quasi-constitutional in nature, its continuing vitality now hinges upon meaningful reform efforts. It is now time to squarely face the perennial issue of commitment: is there a political will and a bureaucratic willingness to live up to the quasi-constitutional rights now enshrined in the *ATIA*? Is there a similar will to amend the law now, as is urgently required, to make it responsive to some of the serious and pressing issues canvassed in this book? . . . Without a meaningful right to information, our democracy atrophies.

[11]

**Murray Rankin, QC, currently B.C. NDP MLA and Minister of Indigenous Relations. Keynote address, B.C. FIPA Information Summit, Sept. 29, 2006**

Politicians become ministers, and they become easily seduced by the attractions of secrecy. . . . Can we not find bipartisan support to restore our freedom of information?

Most important of all, it has so far failed to implement the very thoughtful recommendations of the special all-party committee of the Legislature chaired by Mr. Blair Lekstrom. It has been over two years since the committee issued its unanimous recommendations. The silence from the government so far is deafening.

At the beginning of this new century, the right to information is now being regarded as the prerequisite for the exercise of other rights to democracy. . . . If [B.C. FOI] is as important as human rights, which the Court also found to be a quasi-constitutional right, how can we allow it to be treated that way?

[12]

Hansard, Oct. 17, 2011

**NDP MLA Doug Routley (on *FOIPP Act* section 12, cabinet records):**

There's a standing joke in government and in research circles that anything the government doesn't want to share with the public simply gets loaded onto a trolley and wheeled through the offices of the cabinet and thereby becomes a recommendation to cabinet and exempt. That's one area of the act that wasn't addressed in this amendment act that could have gone a long way to improving the openness of our democracy.

I am concerned - and others are - that section 12 is being used increasingly as an excuse for blanket withholding of information of government. As with section 13 that I'll talk about in a minute, this is now not only being used for specific cabinet documents but even for any information that might have gone into the creation of those documents.

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**On *FOIPP Act* Section 13 – the Policy Advice exemption**

[13]

**[Former NDP Attorney General Colin Gableman - who introduced the B.C. *FOIPP Act* in 1992 - in a speech to the 2007 BC Information Summit]**

Section 13 was so clear and obvious that there was not a word spoken by any member of the House on it during the committee stage debate. Not a word! . . . I have to tell you that the Appeal Court quite simply failed to understand our intention - the intention of the legislature – when using these words as we did. . . . A government which believes in freedom of information would have introduced amendments in the first session of the legislature after that Appeal Court decision to restore the Act's intention.

[14]

**Murray Rankin, QC, currently B.C. Minister of Indigenous Relations. Keynote address, B.C. FIPA Information Summit, Sept. 29, 2006**

I'm particularly concerned about the B.C. Court of Appeal's decision in the *College of Physicians and Surgeons* case (also known as the “Dr. Doe” case), where the policy advice or recommendations exemption in the *Act* was, in my view, extended remarkably and too far.

I do hope that the government agrees that this is a regressive development and, consistent with its recent re-affirmation of a commitment to open government, will amend the section to overcome the Court of Appeal's overbroad reading of Section 13(1). It is now up to the government to ask the Legislature to change the *Act* and restore the original intent of the

legislation and I hope the Opposition will be watching - I know all of us will - to ensure the government does not listen to its officials and try to duck this one.

[15]

Hansard, April 1, 2008

**NDP MLA Mike Farnworth (the current Solicitor General):**

Anyway, the Privacy Commissioner has called for an amendment to section 13 dealing with advice: "As it stands, the advice or recommendations exception I think unacceptably curtails the public right to know." He had a deep concern: "In this case, Bill 25, the predecessor of this bill, fails to address a serious imbalance that now exists between the public's right to know and government confidentiality. Not to amend section 13 would seriously undermine public accountability by allowing public bodies to possibly withhold broad swaths of information.

They just don't get it. An all-party committee went out and came back with recommendations. Those recommendations were thoughtful. They were bipartisan. They had the support of the public . . . . So what happens? It's ignored. . . . Minister, this is your last session. You said you're not running again. Take this opportunity. Seize this opportunity to put your stamp on one of the most important, fundamental pieces of legislation before us in this chamber.

[16]

Hansard, April 1, 2008

**NDP MLA Katherine Conroy:**

Most notably, the policy advice section, Section 13. I think it's the dreaded Section 13, as anybody who has requested a Freedom of Information Act would call it. It does not have the amendments that have been requested. This government has been caught abusing this section in order to hide politically damaging information. It has been proven again and again that the ministries are utilizing section 13 to not be open and accountable, to not provide information to people when they ask for it.

I think that we know that the government record on freedom of information has been, in fact, quite dismal. The act has been amended six times since 2001. It has led to less accountability each time, and 16 changes that have been made to the Freedom of Information Act have made the requests much more time-consuming and much more difficult.

Hansard, May 29, 2008

**[K. Conroy presented a bill titled *Freedom of Information and Protection of Privacy Act Amendment Act, 2008*]**

It gives me great pleasure today to be introducing a piece of legislation that amends the *Freedom of Information and Protection of Privacy Act* in order to restore public access to information. Amendments to section 13 narrow policy advice exceptions, preventing information from being withheld when it is not directly related to policy or when the relevant government decision has already been made, and restoring the purpose of this section to its original intent. *[The Bill did not pass.]*

[17]

**NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009**

*Q.3. Increasing use is being made of several “exceptions” in the FOIPP Act. In particular, section 12 (cabinet confidences) and section 13 (policy advice) are now used to block the release of factual or background information. What will your government do to limit or narrow the current exceptions or limit their use?*

**Reply:** The Campbell government has improperly used multiple exemptions in order to restrict the public’s access to government information. In particular, the B.C. Liberal government has expanded the meaning of “advice” in section 13 “Policy Advice”, and their use of this section has led to a widespread call for reform: the freedom-of-information commissioner, the B.C. Freedom of Information and Privacy Association, the Campaign for Open Government and an all-party committee chaired by a government member have all recommended that the section be fixed, but the Campbell government has refused to act.

Our private members bill returns the policy advice exemption to its original intent, preventing information from being withheld when it is not directly related to policy or when the relevant government decision has already been made.

[18]

**NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), April 27, 2017 ( <https://fipa.bc.ca/wp-content/uploads/2018/01/BC-NDP-Response.pdf> )**

*Q.3. Certain sections of FIPPA that exempt records from release, specifically cabinet confidences (s.12) and policy advice (s.13) have long been criticized as overly broad and in need of change. What specific changes, if any, would you make to those sections?*

**Reply:** Anyone who has ever submitted a Freedom of Information request to the Christy Clark B.C. Liberals knows that more often than not, what they get back (if it’s not a “No Records” response”) is reams and reams of blank or heavily severed pages. The B.C. Liberals have used multiple exemptions in order to restrict the public’s access to government information, and two key ones are Section 12 and 13.

The B.C. Liberals’ use of section 13 to deny even factual information has led to widespread call for reform, including by the Information Commissioner, and we support the Commissioner’s



advice, reflected in the May 2016 report of the *Special Committee to Review the Freedom of Information Act*, that the meaning of this section should be restored to its original, pre-B.C. Liberal, intent.

We also support the position of the Information Commissioner regarding Section 12: the Commissioner has clearly stated that “the importance for our system of government of generally protecting the confidentiality of Cabinet proceedings and deliberations is beyond question” (<https://www.oipc.bc.ca/special-reports/1274> ) but that this should not be applied as a blanket mandatory exemption, as the B.C. Liberals have done, but rather that “the government can maintain an appropriate and necessary level of confidentiality using a discretionary exception” exercised by Cabinet (<https://www.oipc.bc.ca/special-reports/1935m> )

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### On FOI-exempt subsidiary companies

[19]

Hansard, May 20, 2008

**[NDP MLA Katherine Conroy presented a bill titled *Freedom of Information and Protection of Privacy Act Amendment Act, 2008*]**

It gives me great pleasure today to be introducing a piece of legislation that amends the *Freedom of Information and Protection of Privacy Act* in order to restore public access to information. The amendments increase the scope of the act to include information from quasi-public bodies in order to preserve public access to information concerning bodies that are performing governmental functions.

As well, this act increases the transparency of government with regards to information available to the public. By expanding the scope of the Freedom of Information Act, enhancing the public interest paramount principle and limiting exemptions under section 13, as recommended by the Information and Privacy Commissioner, it restores a high standard for public access to information. Coupled with improvements in the time and cost involved, this act improves government accountability, transparency and openness. *[The Bill did not pass.]*

[20]

Hansard, May 18, 2016

**NDP MLA Doug Routley:**

The next question I would like to ask is related to the subsidiary corporations of public bodies. It's been a recommendation for some time from committees that subsidiary corporations - land development corporations subsidiary to universities, for example, and business corporations of school districts - essentially any subsidiary corporation controlled by

government.... There are several different definitions of what that might be. A 50 percent plus one ownership stake in that corporation or the appointment of directors of the corporation by the government could qualify the corporation to come under the scope of FIPPA.

It's been a recommendation from a couple of commissioners, a couple of reports now. A previous minister from Prince George had agreed, when she was Education Minister, that that was an appropriate step and a gap in the legislation. Has the minister considered it? Will he be moving to bring subsidiaries under the scope?

**Hon. Mike de Jong [Liberal minister for FOI policy]:**

Short answer is yes. It is something that we are examining, that I am seized of . . . . So the idea, the notion of extending the umbrella more broadly, is something that I see wisdom in.

[21]

Hansard, March 7, 2007

**NDP MLA Harry Lali:**

When we talk about that, there are a number of bodies that come into play that are actually covered. B.C. Ferries, for instance, is one of them. The role of Maximus, the MSP premiums, is in there. Accenture, which is Hydro records and billings. And then you can also look at the Northern Development Initiative Trust, the Southern Interior Development Initiative Trust and the Vancouver Island development initiative trust. There are a number of bodies that are now put at arm's length. VANOC is another one, and a whole lot of P3s also come under the purview of this.

It's the taxpayers' money that these quasi-governmental, quasi-independent bodies spend. If there is only one taxpayer in this province, it's their money that is being spent. Yet there is absolutely no accountability. . . . they're spending literally billions and billions of dollars. Actually, there was an estimate that was done. It was \$27 billion worth of projects that are being done as a result of all of this, and people don't have access to their own information.

So I'd like to ask the minister: how can she say that they are living up to the Premier's statement of being the most open, accountable and democratic government when clearly they are not? What is she willing to do to make sure that people can get access to their information from these quasi-independent, quasi-government bodies that I've mentioned?

[22]

Hansard, July 21, 2015

Meeting of the Special Committee to review the B.C. *FOIPP Act*.

**NDP MLA and committee member David Eby (the current Attorney General):**

We were provided a document that had a list of recommendations put forward by the 2010 committee and where we were at in terms of the implementation as a province. Recommendation No. 4 was: “Expand the definition of ‘public body’ in schedule 1 to include any corporation that is created or owned by a public body, including an educational body.”

Now, I understand the history of this is that in 2005 Minister Shirley Bond issued a press release saying that school boards that owned entities would be subject to FOI. We got an update last week, this week. . . . saying that this was under consideration, that there were consultations that had been done, and there were implications that may have “unintended consequences.”

I’m having trouble understanding how in 2005 the government could say that they were going to do this, and in 2015 we still don’t have this in place.

*(Committee Meeting, Nov. 18, 2015)*

**[NDP MLA David Eby speaking to the Government’s Chief Information Officer]**

**Eby:** In follow-up on this wholly-owned-subsiary issue, I’m surprised that you’re seeking advice from this committee about how to implement this. I note in the Privacy Commissioner’s submission, she notes: “In June 2014 and October 2011, I wrote to the relevant ministers to ask that an amendment be drafted to FIPPA to ensure that these entities were all public bodies that were covered by FIPPA.”

Since October 2011, or perhaps since June 2014, you haven’t been able to figure out a way to get wholly-owned subsidiaries under the Freedom of Information Act, any way to draft legislation to bring them underneath? If you haven’t, if that’s the case, have you advised the commissioner of your difficulty around this and asked for suggestions about how to implement her recommendation?

It seems to me that this has been going on for a long time. This committee has heard from six or seven witnesses that this is a serious issue. We’re going to hear from the commissioner, it seems, on it as well. I find it surprising that there are no records on this request.

**B. Hughes:** *I’m not sure I understand your last comment that there are no records.*

**Eby:** How can it be that since October 2011 this has been an issue - a huge issue for the public - in front of this committee for multiple years, yet this ministry has no idea about how to implement that recommendation and is, in fact, seeking recommendations from elected officials about how to do that?

[23]

**NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009**

*Q.2. Extending the FOI act to all public and quasi-public bodies - A number of multi-billion dollar entities are not covered by the FOIPP Act, including BC Ferries and VANOC. Will you*

*extend the scope of the Act by covering the public and “quasi-public” bodies not currently covered?*

**Reply:** We support expanding the scope of the *Act* to include information from quasi-public bodies in order to preserve public access to information concerning bodies that are performing governmental functions.

[24]

*Q.4. In 2017, the Special Legislative Committee reviewing FIPPA repeated the recommendation from the 2010 Committee that subsidiaries created by educational public bodies like colleges and universities should be made subject to the Act. Will your government make this change and if not, why?*

**Reply:** We support the *Act* being expanded to capture subsidiaries created by public bodies and will consult with affected organizations.

- NDP reply to FIPA, election campaign questionnaire, April 27, 2017

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## On “oral government” and duty to document

[25]

[From news story: [Records for 2010 Olympic Games go missing](#). By Stanley Tromp. *The Georgia Straight*, April 17, 2008. *Background: Minutes of the meetings of the B.C. 2010 Olympic and Paralympic Winter Games Secretariat - a branch of the B.C. Economic Development Ministry - the entity that politically oversees the Games, were recorded for a time. It ceased doing so after being irked by the media’s FOI requests for them; the Liberal minister for the Olympics publicly defended the move. Then-MLA Harry Bains is the current minister of labour.*]

The loss of FOI access to the minutes is “reprehensible”, the B.C. NDP Olympic Games critic, MLA Harry Bains, told the *Straight*. “It’s like pulling teeth. This secrecy is absolutely unacceptable. This is billions of taxpayers’ money. It’s also paramount to the success of an organization to keep minutes so that we can review the past history of decision-making, and improve it in the future.”

[26]

[From news story: *Victoria's secrets have long been kept creatively; Freedom of Information law sidestepped by premiers for 23 years*. By Rob Shaw. *Vancouver Sun*, Oct. 29, 2015]

Private email accounts, secret code names, mass deletion of emails, the suspicious absence of key records and an oral culture of not writing things down - these sound like ways staff and members of Premier Christy Clark's government are skirting the FOI Act.

From the moment the FOI law passed in the legislature, NDP and Liberal premiers have found ways to get around it. "I can remember public servants saying, 'Well, let's not write this down,' " said Colin Gabelmann, the NDP attorney general who created the act. It's all disheartening to Gabelmann, the father of the FOI act who has watched it be weakened and undermined for years.

"I didn't anticipate it," he said in an interview. "It's like burning books. It's destroying evidence. It's destroying history. I never ever anticipated it would come to this."

In 2000, then-premier Dosanjh was forced to admit 18 cabinet ministers were using private email accounts with secret code name aliases (Dosanjh, a self-admitted technology Luddite, had the email alias "Loriann" after the assistant who set up his computer). Critics said they were sidestepping FOI.

NDP Leader John Horgan, who worked as a staffer in the '90s-era NDP governments, said he doesn't remember finding ways to exploit the FOI act. A future NDP government wouldn't mistreat FOI, he said.

[27]

Hansard, March 7, 2013

**NDP MLA Maurine Karagianis:**

You'd think when the Premier has claimed credit for shipbuilding where none actually occurred, at least there would've been some shred of paper somewhere in her office to document it. The reality is that since this Premier was sworn in, the increase in "no records" responses from her office has increased by 45 percent. The lack of records only serves to make British Columbians more suspicious about what their government is doing and why it is so secretive in hiding information through the back channels.

[28]

Hansard, Feb 16, 2017:

**NDP MLA Doug Routley:**

I move the introduction of the Public Records Accountability Act. I am pleased to introduce a records accountability act. This is the third time I have brought forward a bill to improve British Columbia's access to information. This all is against the backdrop of continued scandals regarding information management in this province — this against the backdrop of repeated condemning reports from successive Information and Privacy Commissioners. This bill acts on

many recommendations made by the Information and Privacy Commissioner as well as several select standing committees to review the *Freedom of Information and Protection of Privacy Act*.

This bill does three key things. First, it creates a positive duty to document, which will require that the government maintain full and accurate records pertaining to any action that the government makes, which includes business done with contracted companies. Recent years' triple-delete scandal and a plethora of "no records" responses to freedom-of-information requests require that the people of B.C. have more confidence in the management of the records of government.

Second, this bill requires that this information be maintained in an accessible form so that all may reference this information and ensures that no government document is destroyed without authorization.

Finally, this bill creates the duty to investigate instances of unauthorized destruction of government information and compels public bodies to release records as to how they process freedom-of-information requests. It also removes legal immunity from officials who fail to disclose documents. *[The Bill did not pass.]*

[29]

Hansard, March 2, 2015

**NDP MLA Doug Routley:**

The government has a record of relying on an oral culture, increasingly relying on government and governance without documentation.

We have seen that so many times in this province, where the government has failed to produce information, has produced incorrect information, has produced misleading information that has led directly to tragedy in people's lives and a farce of good governance. Creation - in other words, the duty to document - is a failed aspect of Bill 5. . . . What good is a Freedom of Information Act absent the information? It's empty. It's meaningless. Frankly, I would argue that it is contemptuous of taxpayers.

(Hansard, March 14, 2017)

Since the *Act* was passed in 1994, and up to 2015, there have been 50 amendments to the act. Of those 50 amendments to the act, zero were expanding openness. Zero expanded access for British Columbians. . . .

As I said, I was pretty excited when I saw that there was going to be legislation that said: "Duty to document." I was talking to people about it, and they said: "No, there is no duty to document." This is typical of this government. This is, yet again, an attempt to try to do something just before an election. To be able to say one thing when in fact they're doing the opposite — doing absolutely nothing.

[30]

**NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009**

*Q.5. B.C. is the only province in Canada which does not have an Archives Act to ensure that important government records are preserved. And currently, government documents are not being properly placed in the provincial archives. What will you do to correct these inadequacies?*

**Reply:** An NDP government will consider Archive acts and best practices across Canada for dealing with government records in order to determine a made-in-BC policy.

*Q.6. What will your government do to incorporate the principles of public access into the creation, preservation and destruction of records, including:*

*= a positive duty to create and maintain records of key government decisions, orders, actions, deliberations and transactions; and*

*= penalties for improperly tampering with or destroying records to avoid disclosure?*

**Reply:** An NDP government will consider best practices both across Canada and internationally regarding the duty to create and maintain records in order to determine a made-in-B.C. policy.

[31]

**NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), April 27, 2017 ( <https://fipa.bc.ca/wp-content/uploads/2018/01/BC-NDP-Response.pdf> )**

*Q. 2. Both FIPA and the Information and Privacy Commissioner have recommended the creation of a ‘duty to document’ in the Freedom of Information and Protection of Privacy Act. The Special Legislative Committee reviewing FIPPA agreed with this recommendation. FIPA has called for the creation of penalties under FIPPA to discourage interference with information rights, as have the Commissioner and the Special Committee.*

*Will your government act on the Commissioner’s recommendations to put a “duty to document” in the Freedom of Information and Protection of Privacy Act?*

**Reply:** Yes. The B.C. NDP has introduced legislation multiple times, including the *Public Records Accountability Act, 2017*, to strengthen Freedom of Information legislation and create a positive duty to document government actions for greater accountability to the public. The B.C. Liberals have not only repeatedly refused to legislate the duty to document, including in their recent pre-election PR exercise of Bill 6, but Christy Clark and the B.C. Liberals were found to have flouted and even broken FOI laws to avoid accountability using practices including the

willful destruction of emails and documents that the Information Commissioner called a threat to the integrity of access to information in British Columbia.

And the rot started right at the top: the Commissioner discovered that the Christy Clark staffer in charge of FOI coordination in the Premier's office was using Post-it notes to avoid proper record keeping, and her deputy chief of staff for operations had not retained a single email over two years working for Clark.

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### ***On B.C. FOIPP Act section 25, the Public Interest Override***

[32]

#### **NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009**

*Q. 7. Will you reinforce section 25 of the FOIPP act, "Public Interest Paramount" to take a more expansive approach to evaluating when disclosure of records is in the public interest and a fee waiver is merited?*

**Reply:** We introduced a private member's bill which strengthens Section 25, the public interest override clause. Our bill broadens the categories of information where public interest must be seen as paramount, and provides for a fee waiver in cases where disclosure of information is deemed in the public interest.

[33]

#### **NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), April 27, 2017 ( <https://fipa.bc.ca/wp-content/uploads/2018/01/BC-NDP-Response.pdf> )**

*Q.5. Section 25 of FIPPA states that if government records are deemed to be in the public interest, they must be disclosed, even if no request has been made. FIPA, the Commissioner [and the Special Committee] have called for legislative change to this section to bring it into line with how the Commissioner interprets this requirement.*

*A. Do you agree that Section 25 needs to be rewritten to reflect this?*

*B. What other steps would you take to bring public bodies into line with their statutory duty to disclose under this section?*

**Reply:** The public interest override section is a key provision for Freedom of Information legislation. After the Mount Polley disaster, the Information Commissioner released a report showing that the Christy Clark government had information indicating the existence of a potential safety risk but did not disclose this to area residents. The Commissioner identified the term "urgent circumstances" in section 25 as the reason for government withholding this information and concluded that urgent circumstances should not be required to trigger disclosure



where there is a clear public interest to do so. We believe the spirit of the public interest override should again be reflected both in the Act and the response from public bodies, and we will act to ensure this.

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## Several Other FOI Issues

[34]

### **NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009**

*Q.1. Improving the government's response to Freedom of Information requests*

*B.C.'s Information and Privacy Commissioner has repeatedly called for improvement in the serious and chronic problem of delay in government responses to freedom of information requests. If your party forms the next provincial government:*

*(1a) What will you do to create a change in government culture and performance regarding freedom of information requests?*

**Reply:** We are committed to restoring a high standard for public access to information and as government will require faster turn-around on Freedom-of-Information requests.

*(1b) What specific amendments or reforms would you make to the Freedom of Information and Protection of Privacy Act and its administration?*

**Reply:** We introduced a private member's bill containing several specific reforms to improve the government's response to FOI requests, including shortening response times, returning the definition of "day" to its ordinary meaning, and addressing the excessive fees that have been levied by the BC Liberal government in order to make information more readily available to the public.

*(1c) In his February 2009 report, the Information and Privacy Commissioner identified the main causes of FOI delays as systemic – underfunding, cumbersome sign-off procedures and inter-ministry consultation processes, and a need for better records management practices across government. What will you do to reduce these problems?*

**Reply:** We are committed to cutting red tape and requiring faster turn-around on Freedom-of-Information requests supported by realistic funding for the Freedom of Information and Protection of Privacy office.

*Q.4. Governments in BC and elsewhere have developed a process of 'amber lighting' or providing special attention for FOI requests from the media, political parties or civil society groups. These requests often take much longer to process than requests which are not singled out*

*for special attention. What specific measures will you implement to ensure that requests are not singled out for additional delays and obstruction?*

**Reply:** We will not continue the Campbell government policy of targeting “troublesome requestors” and amber-lighting specific categories of requests.

*Q.8. Will you extend the time period for appeals to the Information and Privacy Commissioner from the current 30 to 90 days?*

**Reply:** An NDP government will consult with the Freedom of Information and Privacy Commissioner over methods to improve the appeal process, including the issue of appropriate time periods.

[35]

### ***Addendum – Statements on Freedom of Information by Liberal Premiers***

Open government is about giving people access to the information that they need to participate and to help us find solutions to the issues that affect us all. After all, it's taxpayers' money and it's taxpayers' information. It's time to open up government.

- *B.C. premier Christy Clark in video posted on YouTube, July 18, 2011*

We're committed to being the most open government in Canada by May 2013.

- *B.C. premier Christy Clark to Vancouver Sun, October 26, 2011*

Open government is the hallmark of a free and democratic society. Access to government information helps us as the official opposition and others hold the government to account, and accountability enhances democracy.

Secrecy feeds distrust and dishonesty. Openness builds trust and integrity. The fundamental principle must be this: government information belongs to the people, not to government.

This means, among other things, that all citizens must have timely, effective and affordable access to the documents which governments make and keep. Governments should facilitate access, not obstruct it.

- *Liberal opposition party leader Gordon Campbell, letter to the B.C. Freedom of Information and Privacy Association (FIPA), July 22, 1998*

We will bring in the most open and accountable government in Canada. I know some people say we'll soon forget about that, but I promise that we won't!

- *Newly elected B.C. premier Gordon Campbell, victory night speech, 2001*