



INFORMATION ACCESS AND PRIVACY PUBLIC ENGAGEMENT

“WHAT WE HEARD”

Corporate Information & Records Management Office |
Ministry of Citizens' Services |

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ENGAGEMENT OVERVIEW

The Ministry of Citizens' Services asked for thoughts and ideas from interested members of the public on how to improve access to information and enhance privacy protection.

As one component of our overall engagement strategy, an online public engagement was initiated in the spring of 2018, inviting stakeholder organizations, subject matter experts, and individuals to provide a formal written submission, or participate in public dialogue on a series of topics.

This report summarizes the considerations, ideas and responses from participants compiled during this online public engagement process.

The Ministry has already received a number of recommendations for changes to FOIPPA and other valuable feedback from a variety of groups — including a Special Committee of the Legislative Assembly.

We also met with others who helped inform future changes and improvements, including users of the FOI system, interest groups, public bodies and the Information and Privacy Commissioner

The conversation with British Columbians is ongoing, and we will continue to look for more opportunities to involve our stakeholders in designing improvements.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FOIPPA) OVERVIEW

British Columbia's *Freedom of Information and Protection of Privacy Act* (FOIPPA) came into force in 1993 and applies to approximately 2,900 public bodies. These bodies include ministries, Crown corporations, municipalities, universities and colleges, school boards, health authorities and governing bodies of professions and occupations (e.g., the College of Physicians and Surgeons of British Columbia).

FOIPPA aims to balance the duties government has to be transparent and accountable to the public, while also protecting the privacy rights of British Columbians.

FOIPPA has not been substantively amended since 2011. While strides have been made to improve policies and processes in recent years, it is important to ensure we are continuously improving in the areas of access to information and protection of privacy.

WHO WE HEARD FROM

Organizations/Experts

15



Individuals

19



Blog Respondents

39



WHAT WE ASKED YOU TO WEIGH IN ON

We posted information about topics including:

- The FOI process;
- Protecting your privacy;
- Getting access to the information you want;
- Fees for FOI requests;
- Reporting privacy breaches; and
- Offences and penalties in FOIPPA.

WHAT WE HEARD

CHALLENGES & OPPORTUNITIES

Challenges

Opportunities

Outcomes

Transparency

Create adequate government records

Ensure exceptions to disclosure are applied appropriately

Expand coverage of FOIPPA to subsidiary entities

- Increase availability of records of importance and interest to the public
- Increase trust and accountability

The FOI Process

Enhance communication about when fees are charged and for what

Simplify and modernize fees

Increase timeliness

Enhance support to applicants in directing their requests to the right place

Increase staff allocation and enhance staff training

- Process and expectations are clearer
- Fees are easier for public bodies to apply and for applicants to understand
- Increase timeliness

Protecting Privacy

Enhance communication about privacy breaches

Increase protection for "whistleblowers" *

- Increase trust and accountability

Proactive Disclosure

Continue to identify information for disclosure without a request

Enhance communication about what information is available

- Increase transparency and accountability
- People can more readily access the information they are interested in, in the formats most useful to them

Other Issues

Ensure archival of government information of lasting value

Increase and enforce penalties

Support release of information in the public interest

Reduce response times at the Commissioner's office

- Ensure completeness of the historical record
- Increase transparency and accountability

*The Public Interest Disclosure Act received Royal Assent on May 17, 2018.

CHALLENGES & OPPORTUNITIES

- Accountability and transparency of public bodies were at the core of most submissions.
- Participants called on public bodies to share information in the public interest, to enhance public trust.
- Several participants supported a requirement to document government decisions.
- Barriers to accessing information were identified by many participants as suggested areas of focus for reform. These included:
 - perceived delays or failures to produce records;
 - difficult and time-consuming processes;
 - broad application of exceptions to disclosure;
 - coverage of subsidiary entities owned or controlled by public bodies; and
 - fees for requests.
- Participants also focused on opportunities to make more information available without an FOI request.
- Participants noted the importance of notifying affected individuals when their privacy has been breached.
- There was confusion about fees, and several participants made recommendations about changes to the fee structure.
- Many participants felt that the Office of the Information and Privacy Commissioner should be held to a time limit (e.g. 30 days) for the resolution of a complaint.
- Several participants noted that entities that perform public functions should be held to the same level of transparency and accountability as public bodies.
- There were misconceptions identified around FOI response timelines and extensions, and whether contracted service providers are covered under the Act, suggesting a need for improved awareness for the public about the Freedom of Information process and the rights afforded by the Act.

WHAT WE HEARD: TRANSPARENCY

Exceptions to the Right of Access to Information

People have the right to access any public record through FOI and receive those records, subject to certain exceptions contained in legislation. These exceptions are designed to protect information that could be harmful to government or a third party, like businesses, individuals, or law enforcement. Some of these exceptions are applied at the discretion of the head of the public body, while other exceptions are mandatory and must be applied in all cases.

A few participants expressed concern respecting what they perceived as frequent or broad application of these exceptions.

One submission suggested these exceptions might be a barrier for Indigenous groups seeking records they need to substantiate land claims, seek reparations or foster reconciliation.

WHAT WE HEARD: TRANSPARENCY

Documenting Government Decisions

A duty to document is a positive obligation, in law or policy, to create records of government decisions. To promote accountability, there was support among some participants for a requirement to document government decisions.

Several participants supported including a requirement to document government decisions in FOIPPA. A few suggested that if public bodies fail to create and retain appropriate records, the public's perception of government transparency is negatively affected.

Expanding Coverage of the Act to Subsidiary Entities

Some public bodies own or control other entities, which have been created to carry out specific functions on behalf of the public body.

Several participants noted that entities that perform a public function should be held to the same level of transparency and accountability as public bodies.

WHAT WE HEARD: THE FOI PROCESS

Fees for Requests

FOIPPA authorizes public bodies to charge applicants fees for specific activities associated with responding to requests for general information. Fees are not charged when a person makes a request for their own personal information.

Some participants were concerned that fees could discourage low-income British Columbians or not-for-profit groups from making requests. Some suggested that fees should be either reduced or simplified, for example by charging a flat-rate application fee for general requests.

A few participants suggested that no fees should be charged for electronic documents.

Finally, a few participants were under the misconception that government charges fees for requests for personal information, which is not the case. This indicates an area in which the Ministry could enhance its public education and awareness.

WHAT WE HEARD: THE FOI PROCESS

Fee Waivers

While processes to reduce or waive fees exist, a few participants noted that these were resource-intensive processes that delayed access to information. A few participants also noted that fees should automatically be waived when large amounts of information are redacted before records are released to the applicant.

Fees for Broad or Voluminous Requests

Some participants recognized that fees are a useful tool for encouraging applicants to better focus requests. However, they also noted that, where a request is so broad as to result in a large number of responsive records or a significant amount of effort in responding, public bodies should assist an applicant in refining the topic of the request, to reduce or eliminate potential fees.

Training and Resources

To support timely responses to information requests, several participants agreed that offices handling information requests need to be adequately funded and staffed. Further, participants noted that staff in public bodies should receive training and education to ensure they can fulfill their duty to assist applicants.

WHAT WE HEARD: THE FOI PROCESS

The Application Process

In order to obtain access to information in a record, an applicant must make a written request that provides sufficient detail and submit it to the public body that the applicant believes has custody or control of the record.

Several participants raised concerns over what they perceived as a difficult and time-consuming process. Specifically, a few participants mentioned delays that resulted from being asked to clarify information requests. Others reported that some public bodies may not have enough staff available to respond to requests.

Some participants suggested applicants should be provided more assistance in locating the relevant public body or ministry to which they should send their requests.

WHAT WE HEARD: THE FOI PROCESS

Timelines for Responding to Requests

Public bodies are required to make every effort to respond as quickly as possible to requests for information.

FOIPPA establishes a maximum time limit of 30 business days for responding to a request. In some circumstances, a public body is permitted to extend this time limit by 30 or more business days, to provide enough time to adequately respond to an applicant's request.

Some participants felt that the timelines should be reduced, and that timelines for their requests were frequently extended. Some participants felt that responses need to be provided sooner, especially if a request is in response to an imminent need.

WHAT WE HEARD: PROTECTING PRIVACY

Some participants supported a mandatory requirement for public bodies to report privacy breaches to the Office of the Information and Privacy Commissioner, and to notify affected individuals who have been adversely impacted by a breach. Participants also reported a need for timely resolution of privacy breaches.



WHAT WE HEARD: WHISTLEBLOWER PROTECTION

Several participants expressed support for “whistleblower protection”. While FOIPPA contains protections for employees in limited circumstances, experts believed that broad “whistleblower protection” through a separate Act would ensure increased transparency. The Public Interest Disclosure Act received Royal Assent on May 17, 2018; however, it is not yet in force.

WHAT WE HEARD: DUTY TO ARCHIVE

A few participants felt that there is a need to ensure that government records are created, retained and transferred to government archives to overcome perceived gaps in public record keeping.

Government continues to work toward the implementation of a permanent trusted repository for digital government records. Government information in paper format that is scheduled for permanent retention is held at BC Archives.



WHAT WE HEARD: PROACTIVE DISCLOSURE

To support transparency, several participants agreed that government has a duty to provide routine, timely proactive access to records, without the need for an FOI request. A few participants noted that information that is already frequently requested via FOI requests should be released proactively.

Some respondents felt that the routine and timely, predictable and proactive release of records may reduce the quantity of FOI requests, therefore improving timeliness.

WHAT WE HEARD: DISCLOSURE IN THE PUBLIC INTEREST

FOIPPA contains a public interest override, which applies in spite of any other exception to disclosure in the Act, and mandates the disclosure of information about a risk of significant harm to the environment, the health or safety of the public or a group of people, or is in the public interest for any other reason.

A few participants reported the need for increased transparency through the use of this override.

Those individuals noted that when information may protect public safety, public bodies have a duty to inform citizens.



WHAT WE HEARD: OFFENCES AND PENALTIES

FOIPPA contains both general and specific offences for which an individual or organization is liable, upon conviction, to a fine.

Several participants felt that public bodies need to be held more accountable, and supported increased penalties or fines for those who fail to meet the requirements of the Act.

NEXT STEPS & ACTION

Thank you to all of the people who took the time to provide input to help shape government's next steps regarding the *Freedom of Information and Protection of Privacy Act*.

This report provides a summary of the most common themes identified in the written submissions and blog responses we received during our online public engagement.

In addition to these common themes, we heard a lot of other comments from the individuals, organizations and experts who sent us written submissions or responded to our blog posts. Several participants supported previous recommendations raised by past Special Committees, Member's Bills and reports issued by the Information and Privacy Commissioner.

In addition to this online public engagement, the Minister of Citizens' Services and staff also met face-to-face with a number of stakeholder groups to better understand their perspectives. In addition, we took a user-experience approach to the FOI process and interviewed a sample of users to understand common challenges and experiences.

We are carefully reviewing all of the feedback we've received through these engagements.

The B.C. government is committed to making real and meaningful improvements to its information management practices. This includes looking at ways to improve the Freedom of Information process and enhancing privacy protection to safeguard your personal information.

The results of this engagement will inform future changes and improvements to access to information and privacy protection.