

## *SPECIAL COMMITTEE TO REVIEW THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT: TRANSPARENCY, MODERNIZATION AND RISK MANAGEMENT*

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The British Columbia provincial government tabled a series of significant amendments to the [\*Freedom of Information and Protection of Privacy Act\*](#) (the "**Act**") that received royal assent on November 25, 2021 and which were intended to update this legislation to keep pace with technological and structural changes in the ways that public bodies in the province interact with and handle information. The Act aims to make public bodies more accountable to the public and to protect personal privacy. It provides a right to access certain records and personal information held by public bodies, outlines rules for collecting, using, and disclosing personal information in the public sector and provides for independent review and oversight by the Office of the Information and Privacy Commissioner of British Columbia the ("**OIPC**"). Given these broad overarching objectives, the Act applies to approximately 2,900 public organizations in British Columbia, including ministries, agencies, boards and commissions, police,

crown corporations, municipalities, school boards, universities, health authorities, and professional regulatory organizations. As a result, the amendments to the Act have had significant implications for public authorities across the province due to the breadth of institutions that are subject to this legislation.

[Section 80](#) of the Act provides that at least once every six years, a special committee of the British Columbia legislative assembly must undertake a comprehensive review of the Act and submit a report to the legislative assembly which may include recommendations on amendments to this legislation or any other provincial statute that the special committee has reason to believe pose privacy related issues that should be rectified. On June 11, 2021, the Special Committee to Review the Freedom of Information and Protection of Privacy Act (the "**Committee**") was appointed to

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undertake a comprehensive review of the Act. Following briefings, the Committee launched a public consultation process seeking input in respect of the Act. As a result of the public consultation process, the Committee received twenty-three presentations and seventy-four written submissions. On June 8, 2022, [the Special Committee to Review the Freedom of Information and Protection Act: FIPPA For The Future Report \(the “Report”\)](#) was provided to the legislative assembly. The Report includes a comprehensive assessment of the impacts felt to date stemming from the recent amendments to the Act and provides thirty-four recommendations that are intended to:

- 1) establish an additional special committee to review the amendments to the Act within the next two years;
- 2) foster a culture of transparency in which public authorities are to consider information held by these organizations public by default and proactively release this information;
- 3) modernize freedom of information request procedures to improve the efficiency, timeliness and transparency of information requests, and thus, strengthen the general public’s right to obtain information from public bodies;
- 4) conduct a comprehensive review of the Act to address the evolving relationship with Indigenous governing bodies as it pertains to the *Declaration on the Rights of Indigenous Peoples Act* S.B.C. 2019 c. 14;
- 5) examine the socioeconomic and privacy issues associated with de-identification, automated decision-making, biometrics, the right to be forgotten, data-linking, and data destruction with a view of developing clear regulations;
- 6) consult with the OIPC and amend the Act as needed to address new technologies;
- 7) refine privacy management processes so that public bodies are required to correct personal information when requests are made and the public body is satisfied on reasonable grounds that the request made should be implemented;
- 8) enact new comprehensive health information privacy legislation;
- 9) coordinate reviews of the Act in conjunction with other privacy statutes; and
- 10) amend the Act to grant the OIPC additional powers and responsibilities.

Of note, the Committee emphasized that a major cultural shift is needed to address

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the process through which public bodies disclose information and records. The Report has recommended that public bodies shift from an organizational culture in which information is released by request and subject to extensive redactions towards a more transparent approach in which information retained by public bodies will be considered public by default and limited only by narrowly applied and necessary exceptions. As was raised by various stakeholders that participated in the consultations conducted by the Committee over the past year, access to government records is necessary to counter the proliferation of misinformation and disinformation, and as a pre-condition for citizens to make informed choices. An open government promotes accountability, improves citizens understanding of policies, decisions and actions and allows the public to engage in meaningful public debate about issues and possible solutions.

The Committee has concluded that this cultural shift intended to promote the proactive disclosure of information held by public bodies should be a key priority of the British Columbia government. In addition to the positive impacts to democratic discourse and participation associated with increased transparency, the Committee was also of the view that this transition would further alleviate the administrative burden of the current

privacy framework for public bodies. The Report suggests that the proactive release of more records could work to alleviate many of the frustrations surrounding the current freedom of information framework by reducing the volume of requests so that public bodies can streamline resources towards the provision of improved services on a smaller number of applications.

Should the British Columbia government embrace these recommendations and enact further legislative amendments to the Act intended to transition public bodies towards a more transparent culture of disclosure, the volume of information collected by these organizations that will be publicly available will increase significantly. The Committee has suggested that such changes will ease some of the strain experienced by public bodies in handling and responding to freedom of information requests, however, there are concerns that a new legislative regime premised on the principle that information collected by public authorities should generally be made publicly available will also require significant checks and balances to ensure necessary oversight is in place to mitigate the risk that sensitive information may be inadvertently disclosed. There are concerns that such a comprehensive oversight regime may be

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beyond the budgetary and staffing constraints of public bodies to implement and manage. Such a framework would likely require significant man power and could have the opposite effect when considering that should the default position be that information held by public bodies is publicly available then this may result in an increasing number of requests for information from members of the public. Consequently, such changes could contribute to the strain felt by local governments and other public bodies in responding to and managing such requests. In the event that the British Columbia legislature tables further amendments to the Act which are intended to adopt this more transparent approach to information disclosure then it will be necessary that such amendments, or regulations to the Act, set out processes that public bodies must follow to comprehensively assess information prior to its release so as to ensure that sensitive information and other materials do not find their way into the public domain in circumstances where privacy concerns, privilege or political consideration warrant such information not being released.

It would be prudent for local governments and other public bodies to consider the current level of resources they have allocated to the management of information requests and consider whether

additional staff, procedures and policies will be required to comply with this new framework should it be implemented. To keep pace with best practices in privacy, and where budgets allow, local government's may wish to consider retaining the services of a privacy expert or consultant to develop policies, guidelines and staff procedures that will ensure that appropriate checks and balances are in place to mitigate any risk that sensitive information may be inadvertently disclosed under this new framework and to provide training to their staff on how to effectively manage and address disclosure requests from members of the public while ensuring compliance with statutory requirements of the Act.

The OIPC has issued a [news release](#) regarding the Report which can be found on the OIPC's webpage.

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