

MODERNIZING BC'S PRIVACY LAWS: MANDATORY BREACH NOTIFICATION REQUIREMENTS AND PRIVACY MANAGEMENT PROGRAMS FOR PUBLIC BODIES

On February 1, 2023 two significant amendments to British Columbia's [Freedom of Information and Protection of Privacy Act](#) ("**FOIPPA**") will come into force and which will have major impacts on public bodies handling and management of personal information:

- 1) The implementation of mandatory privacy breach notification requirements; and
- 2) The requirement for public bodies to implement a privacy management program.

To familiarize public bodies with these looming changes and to authorize their adoption into *FOIPPA*, the Government of British Columbia recently issued an order of the lieutenant governor in council and a ministerial direction from the Minister of Citizens' Services, which outline the breach notification requirements and set out the necessary building blocks for the design of a privacy management program. These statutory changes are briefly

summarized herein.

FOIPPA

FOIPPA establishes the privacy rights of individuals as they relate to public bodies, an individual's right to access records and the requirements a public body must adhere to in collecting, using, disclosing and disposing of personal information. Public Bodies, as defined in *FOIPPA*, include, among other organizations, provincial ministries, agencies, boards and commissions, Crown corporations, local public bodies, universities, colleges, school boards, municipal police forces, hospitals and self-governing professional bodies. Given the breadth of public organizations that fall within the definition of "Public Bodies" many organizations across the province will be required to implement significant changes to their privacy handling practices and frameworks moving forward.

(Continued on page 2)

BILL 22 – 2021: *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY AMENDMENT ACT*

The implementation of these changes to *FOIPPA* in February of 2023 have been known of for some time and should come as no surprise to public bodies throughout the province. On November 25, 2021, [Bill 22, *Freedom of Information and Protection of Privacy Amendment Act, 2021*](#) (“**Bill 22**”) was passed and adopted sweeping changes to *FOIPPA*. This included the implementation of the privacy breach notification and privacy management program requirements that are to take effect in February 2023. While many amendments to *FOIPPA* set out in Bill 22 came into effect earlier, these two changes were given a long runway before coming into force so that further information on these changes could be provided and so that public bodies would be given ample time to prepare.

As previously noted, the Government of British Columbia has recently provided details on the adoption of these requirements in the following documents:

- 1) [Order of the Lieutenant Governor in Council No. 638](#), released on November 28, 2022, which sets out that section 25 of Bill 22, adding Division 4 Privacy Management Program and Privacy Breach Notifications to Part 3 of *FOIPPA* and amending *FOIPPA* Regulation B.C. Reg 155/2012 to include the sections 11.1 and 11.2 privacy breach notification requirements, will come into force on February 1, 2023; and
- 2) [The Privacy Management Program](#)

[Direction 02/2022](#), released December 2, 2022, which sets out the components of a privacy management program that must be implemented by public bodies to comply with the *FOIPPA* amendments (the “**Direction**”).

PRIVACY MANAGEMENT PROGRAMS

On February 1st, section 36.2 of *FOIPPA* will come into force and which provides that:

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

As set out in the Direction, the components of a privacy management program adopted by a public body should be reasonable and commensurate with the volume and sensitivity of the personal information in the public body’s custody or under its control. The Direction outlines seven components which must be included in any privacy management program:

- 1) The designation by the head of a public body of an individual to be responsible for (a) being a point of contact for privacy-related matters such as privacy questions or concerns (b) supporting the development, implementation, and maintenance of privacy policies and/or procedures (c) supporting the public body’s compliance with *FOIPPA*.
- 2) A process for completing and documenting privacy impact assessments as required and information-sharing agreements as appropriate under *FOIPPA*.

- 3) A documented process for responding to privacy complaints and privacy breaches.
- 4) Privacy awareness and education activities to ensure employees are aware of their privacy obligations. These activities may be scaled to meet the volume and sensitivity of personal information in the custody or under the control of the public body and should be undertaken at timely and reasonable intervals.
- 5) Privacy policies and any documented privacy processes or practice available to employees and where practicable to the public.
- 6) Method(s) to ensure that service providers are informed of their privacy obligations (e.g., awareness activities, contractual terms that address privacy obligations).
- 7) A process for regularly monitoring the privacy management program and updating as required, to ensure it remains appropriate to the public body's activities and is compliant with *FOIPPA*.

Additional information and guidelines have been provided by the Office of the Information and Privacy Commissioner regarding the development and establishment of such programs which should be considered by public bodies in developing their respective privacy management programs to ensure compliance with the new statutory requirements of *FOIPPA*. Public bodies should refer to these guidelines to assess their current

privacy regime, consider their design of comprehensive privacy management programs and to ensure that all necessary building blocks of such a program are considered and implemented in its creation.

PRIVACY BREACH NOTIFICATION REQUIREMENTS

Section 36.3 (1) defines a privacy breach as the "theft or loss, or the collection, use or disclosure, that is not authorized by this Part, of personal information in the custody or control of a public body." In circumstances where a privacy breach involving personal information occurs that may result in "significant harm" to the individual, the public body must, without unreasonable delay, notify the affected individual of the privacy breach and the risk that it may cause significant harm. However, in the event that notification to the individual would reasonably be expected to (1) result in immediate and grave harm to the individual's safety or physical or mental health or (2) threaten another individual's safety or physical or mental health then the public body is not required to notify the affected individual.

What constitutes "significant harm" is set out in 36.3(3)(a) and includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, negative impact on a credit record or damage to or loss of property.

Aside from the requirement to provide notice to the affected individual, the public body must

further notify the Office of the Information and Privacy Commissioner of the privacy breach and its potential to cause significant harm.

TAKEAWAYS FOR LOCAL GOVERNMENTS & OTHER PUBLIC BODIES

The new statutory requirements of *FOIPPA* will require local governments and other public bodies to implement a privacy management program that is in line with the Direction and provides for the commensurate handling and protection of personal information handled or controlled by the public body as based on its volume and sensitivity. Additionally, local governments and other public bodies will be required to adhere to the reporting requirements for privacy breaches and ensure that there is no unreasonable delay in reporting to affected individuals and the commissioner in circumstances that they are required to provide notice of a privacy breach.

To implement and prepare for such changes public bodies should consider whether they require the services of a privacy consultant or professional familiar with best practices in the privacy field to assist in the design of a privacy management program and the implementation of internal policies and procedures through which these organizations can navigate their privacy breach reporting requirements. Public bodies may also wish to undertake routine privacy impact assessments or privacy audits to identify any risks or gaps in their handling of personal information and to assess whether their internal personal information handling policies are being followed and are in line with

the statutory requirements set out in *FOIPPA*.

On a positive note, the implementation of these changes will put British Columbia and its public bodies more in line with the strong privacy practices utilized in a number of other jurisdictions and can be viewed as a necessary step in the modernization of the province's privacy laws and regulations. Additionally, these changes will foster a legal framework that protects personal information in an increasingly digitized and globally connected world where such information may be at risk of theft or inadvertent exposure if not properly handled by public bodies.

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David is an associate lawyer of the firm. His practice is focused on municipal, land development and construction matters. Prior to working at Civic Legal LLP, David worked as a litigator and represented insurance corporations, local governments, construction managers and local and national companies in a variety of legal actions and disputes. David has developed a unique perspective on risk management, negotiation, and strategy from his litigation experience, which he draws on to advise his clients on a variety of legal and regulatory issues. In his solicitors practice David routinely advises clients on local government issues, procurement processes and land use planning and development regulatory matters. He has further drafted construction contracts and municipal service agreements on varied construction projects and contractual matters.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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