



BC FREEDOM OF INFORMATION ACT – BC NDP responses 2009

The BC Freedom of Information and Privacy Association and the members of the Campaign for Open Government would appreciate receiving your views on the following questions. Please do not be restricted by the format and feel free to elaborate on any point.

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

On his very first day in office, US President Barack Obama issued orders to improve the U.S. government's openness and transparency. His first directive instructed all agencies and departments to "adopt a presumption in favor" of Freedom of Information Act requests. The second ordered the director of the Office of Management and Budget to issue recommendations on making the federal government more transparent.

BC'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?

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?

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?

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.

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?

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. Our private member’s bill expanded the Act to include Translink, BC Ferry Corporation, the BC Ferry Authority, VANOC and the Community Care and Assisted Living Facility Review Board.

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?

The Campbell government has improperly used multiple exemptions in order to restrict the public’s access to government information. In particular, the BC 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.

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?

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

5. BC 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?

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.

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?

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-BC policy.

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?

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.

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

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.

Privacy Protections

9. What will you do to strengthen privacy protections in the FOIPP Act to meet the higher standards embodied in the Personal Information Protection Act (PIPA)?

We will study this further and consult with your organization when doing so.

10. The government is introducing Electronic Health Records (EHRs) which will integrate personal health information from all points in the health care system and provide access to it in accordance with the new E-health Act. Privacy advocates have criticized the system for not providing adequate patient control over who may see their information. What specific measures will you bring in to ensure that health care patients in BC have the right and ability to control the use and protect the privacy of their medical records?

A key reason we opposed the government's legislation governing a province-wide electronic health records database is our belief that public confidence in the system's ability to protect privacy will be key to its success. We have concerns about the lack of clarity and effectiveness of the government's proposed disclosure directives and the overall lack of public education about how individuals can exercise control over their personal health information. We are willing to work with patient and privacy advocacy groups after the election to ensure these concerns are being addressed in the implementation of the E-health system.