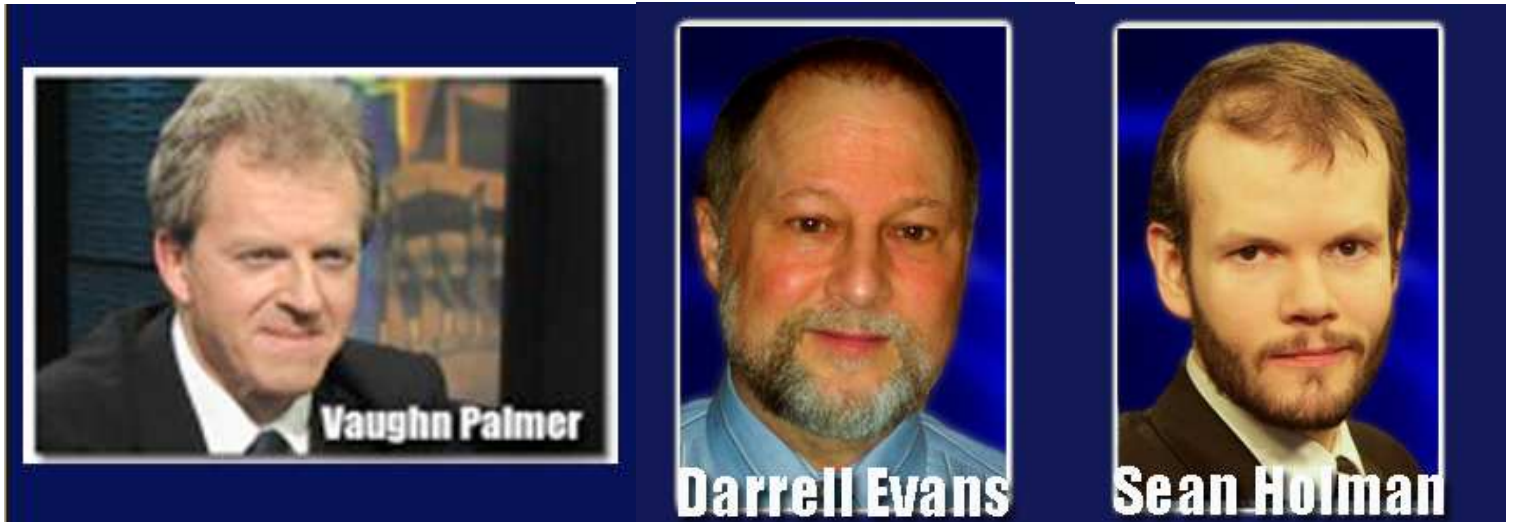


# Voice of BC – Freedom of Information and Privacy

## May 13th 2010

<http://vimeo.com/22405180>



Two major criticisms of government today is that it is too secretive with information that should be available for public scrutiny, and too intrusive into the personal information and lives of citizens. This program addressed both these issues. **Darrell Evans**, then head

of the BC Freedom of Information and Privacy Association and **Sean Holman** of Public Eye On Line provided their concerns about the politics of information within the BC government. They spoke with Vancouver Sun columnist and host of Voice of BC **Vaughn Palmer**.

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## FIPA in the News Jan- March 2011

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### Falcon dismisses conflict accusation

B.C. Liberal leadership candidate Kevin Falcon dismisses any suggestion of conflict in an endorsement from an eyewear company

[CBC News](#)

January 21, 2011

B.C. Liberal leadership candidate Kevin Falcon makes no apologies for a political pitch made by one of his supporters.

The CEO of the eyewear company Clearly Contacts has been emailing customers, urging them to support Falcon's leadership bid.

But one customer, Greg Lightbourn, of Garden Bay, says personal information he gave to order contact lenses online should not be used for political purposes.

"I felt that that was a little bit of a misuse of my email address" Lightbourn acknowledged to CBC News that he is no fan of Kevin Falcon or the B.C. Liberals. He did not say if he would disapprove if an

NDP leadership candidate had been endorsed in the same way.

But such political use of personal information by either party is inappropriate, said Darrell Evans of the B.C. Freedom of Information and Privacy Association.

"It's a clear and a very blatant violation of B.C.'s Personal Information Protection Act," Evans said.

### NDP appalled

Kevin Falcon says he had nothing to do with the Clearly Contacts campaign and anyone who doesn't want to receive the email should complain to the company.

"I mean, I get things in my inbox all the time that I'm deleting," Falcon said.

B.C. NDP leader Dawn Black noted that the company benefitted from a change Falcon made as health minister that made it easier to sell contact lenses online.

"I think it's appalling," said Black.

"It's clearly a conflict and if Kevin Falcon has any integrity he will disavow this. He will ask this company to rescind this email and he will speak out clearly that this is inappropriate, wrong and he will fix it."

But Falcon dismissed the idea there is any conflict.

"The fact that I have supporters in the business community that are out

there generating support for my candidacy should not come as a big surprise," he said. "I am a big believer in growing our economy and creating an economy that is going to attract jobs, investment and secure families's futures."

With files from the CBC's Jeff Davies

Read more:

[http://www.cbc.ca/canada/british-columbia/story/2011/01/21/bc-falcon-clearly-](http://www.cbc.ca/canada/british-columbia/story/2011/01/21/bc-falcon-clearly-contacts.html#ixzz1C5uLyXrl)

[contacts.html#ixzz1C5uLyXrl](http://www.cbc.ca/canada/british-columbia/story/2011/01/21/bc-falcon-clearly-contacts.html#ixzz1C5uLyXrl)

Video:

<http://www.cbc.ca/video/player.html?category=News&zone=canada&site=cbc.news.ca&clipid=1757900972>

## Secrecy for secrecy's sake

**TIMES COLONIST**  
JANUARY 28, 2011

Speaker Bill Barisoff's comments this week give a good sense of the hollowness of the government's commitment to openness and accountability.

Taxpayers paid for a seismic study of the legislature building that was completed four years ago. Citizens own the building (and about 500 of them work inside it).

But the government has consistently refused to release the report. Barisoff, the Liberal MLA for Penticton, said he doesn't really know why he's keeping it secret and has "no particular reason" for not releasing it. It might scare people who work in the building, he mused.

Secrecy for secrecy's sake has too often become the government's default position.

The report was done for the secretive legislative assembly management committee, a group of MLAs who look at issues like their own expense allowances, how much money the politicians get for staff

and other such issues. The meetings are closed. If you want to see the terse minutes, you have to go down to the legislative clerk's office. There's no version of the minutes or reports on the government's website.

This is, as well, the committee that is stonewalling the release of expense claims by MLAs and the one that approved a \$16-million payment to cover the cost of retroactively providing a richer pension plan for MLAs.

The committee's self-interested secrecy might be particularly galling. But it part of a much broader pattern.

The provincial government has a dismal record in responding to freedom of information requests that go beyond the most basic efforts to get personal information. The B.C. Freedom of Information and Privacy Association reported last year that the government failed to meet legal deadlines for responding in 57 per cent of cases. The performance was even worse for requests filed by advocacy groups.

An audit conducted by the Canadian Newspaper Association found B.C. and Ontario tied for the worst among provinces in obeying the letter and intent of freedom of information legislation.

And the New Democrats highlighted the government's dismal performance last year. The party filed identical requests on Jan. 4, 2010, seeking records relating to joint cabinet meetings held earlier and led by Washington Gov. Christine Gregoire and Premier Gordon Campbell.

Washington state responded four weeks later and quoted a cost of \$64. A month later, the NDP received 300 pages of documents about the discussions and work done at the meeting. Nothing was censored or whited out.

The B.C. government responded in February by asking for more time. But by June, three months after Washington had complied, the B.C. government had failed to provide even a page of information relating to the meetings.

# Clark, Abbott commit to creating 'open data' website for B.C.

By CHAD SKELTON

Vancouver Sun  
January 27, 2011

VANCOUVER — BC Liberal leadership candidates Christy Clark and George Abbott both promise that, if elected premier, they will create an “open data” website where citizens can download large volumes of government information for free.

The move would bring the province in line with Vancouver, which launched its open-data initiative last year, as well as the U.S. and British central governments, which have made thousands of government databases available online.

Providing government data in electronic database format — instead of just on paper or in PDF files — allows citizens to monitor how their government is working and third-party developers to create tools based on government data.

For example, in Vancouver, programmers used open data on garbage collection to create a site that reminds residents by email the night before every trash pickup ([vantrash.ca](http://vantrash.ca)).

On Jan. 6, *The Vancouver Sun* sent a survey to all six leadership candidates asking them a number of questions about government transparency.

Three of the candidates — Clark, Abbott and Mike de Jong — responded by The Sun’s deadline. Kevin Falcon, Moira Stilwell and Ed Mayne did not.

*The Sun* asked the candidates if they would commit to launching an open-data site and make specific data sets available, such as government salaries above \$75,000, doctors’ billings, surgical waiting times and standardized test scores.

“Government’s data is the people’s data and making that data available using open standards unlocks enormous potential for private sector innovation,” wrote Clark.

Abbott wrote: “By producing ... data in formats easily read and translated by computers as well as people, citizens can ... create new applications that ultimately enhance the public value of that data.”

De Jong wrote that he was committed to transparency and that “open data appears to be an emerging area of public policy.” But he stopped short of promising to create an open data site and wouldn’t commit to making any specific types of data available to the public.

Herb Lainchbury, a Victoria software developer and open-data advocate, said “the fact they’re all recognizing the value of open data is really positive.”

The candidates were also asked questions about Freedom of Information requests.

Clark said she’s willing to review whether the fees charged to FOI requesters are reasonable. However, Abbott expressed concern that any blanket reduction in fees would simply shift more of the financial burden of FOI requests

onto taxpayers. De Jong didn’t answer the question.

As for exemptions in the Act which permit agencies to keep certain records secret, De Jong wrote government should “foster a culture where we favour the presumption of the release of information.”

Both Clark and Abbott wrote that there is a legitimate need to shield cabinet confidences from FOI requests.

Vincent Gogolek, executive director of the non-partisan BC Freedom of Information and Privacy Association, noted the candidates surveyed seemed more willing to support open data than to make it easier for citizens to file FOI requests.

“[Open data is] always easier, because then they have complete control over the timing and the content,” said Gogolek. “Making a commitment that, if you ask for stuff, we will give it to you, regardless of whether it’s embarrassing or doesn’t fit into our agenda — that’s harder.”

The candidates’ complete survey responses can be viewed online at The Paper Trail blog at [vancouversun.com/papertrail](http://vancouversun.com/papertrail).

*The Sun* will send the same list of questions to NDP leadership candidates this week.

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Read more:

<http://www.vancouversun.com/news/Clark+Abbott+commit+creating+open+data+website/4174596/story.html#ixzz1CeyDynwg>

## BC government loses cabinet secrets case

By Andrew MacLeod  
The Tyee  
February 1, 2011

A Supreme Court decision released Jan. 31 limits how the British Columbia government can define "cabinet documents" to keep secrets.

"This decision today blocks some of the more extreme things they've been trying to do," said Vincent Gogolek, the policy director for the BC Freedom of Information and Privacy Association. "I think it's a good decision. It sets out a number of important points and clarifies things."

At issue were records journalist Stanley Tromp had requested under the Freedom of Information and Protection of Privacy Act from government caucus committees from between 2002 and 2004. The records were severed under [section 12](#) of the act, which requires the head of a public body to refuse to disclose information that would reveal the substance of deliberations of the cabinet or its committees.

The decision by Justice Brian Joyce found the records did not reveal the "substance" of the committee deliberations, and that "reasonableness" was the

appropriate standard for deciding whether they or not they did.

The decision will limit how the government can apply section 12 in the future, said Gogolek. "The government continues to interpret section 12 way to broadly," he said. "This is a really useful decision for future battles."

The government may appeal the decision.

*Andrew MacLeod is The Tyee's Victoria Legislative Bureau Chief*

<http://thetyee.ca/Blogs/TheHook/BC-Politics/2011/02/01/CabinetSecrets/>

## B.C. government will begin posting Freedom of Information records online

***Victoria says move will increase transparency but critics fear it will discourage requests***

By CHAD SKELTON  
VANCOUVER SUN  
February 3, 2011

The B.C. government says it will soon begin posting records it releases in response to Freedom of Information requests on its website — a move it says will improve transparency but critics fear could discourage requests.

"It's something we're actively working on. ... It is imminent," confirmed Lara Perzoff, a spokeswoman for the ministry of Citizen's Services, which processes FOI requests. "We're into accountable and transparent government and this is a way to develop that kind of dialogue and openness with citizens for information that may be of interest to them."

The government's move comes just month after BC Ferries, which became subject to FOI requests again on Oct. 1, became the first provincial

agency to routinely post FOI records on its website.

BC Ferries has argued the policy makes it more transparent.

However, the ferry corporation has also taken a hard line on FOI fees — charging requesters for even 15 minutes of processing time — and typically posts the records it releases late in the day, when newspapers and TV stations are nearing their deadlines.

"It is basically faux transparency," said Vincent Gogolek, executive director of the B.C. Freedom of Information and

Privacy Association, an advocacy group. "Based on the way [BC Ferries] designed the system and the way it seems to be operating, the intention behind it is to actively discourage requesters."

Gogolek's group has filed a formal complaint about how BC Ferries handles FOI requests to Information and Privacy Commissioner Elizabeth Denham.

"One of the reasons we filed the complaint was a fear this would go province-wide if it was seen as being successful in reducing the number of requests," said Gogolek.

Perzoff said the provincial government still hasn't worked out all the details on how it will go about posting FOI records online — for example, whether it will continue to charge requesters full fees for records it makes available to others for free and whether it will give the original requester a period of time to

review the records they requested before making them available to others.

"Will it look like what BC Ferries is doing? I don't know," said Perzoff.

Gogolek said his group supports the idea that FOI records should be made available to everyone. He just thinks the original requester should have a week or so to review the records first.

"It's good that this stuff is going up, no argument. But why does it have to go up immediately?" he said. "I think you have to give it to the requester first."

Without that courtesy, said Gogolek, requesters will be less willing to put in the time needed to file FOI requests and to pay the fees for processing them, which can be in the thousands of dollars.

"If people give up on the process ... then there will be fewer requests," he said. "So

you'll actually have a reduction in transparency for all of us."

Denham said Thursday she couldn't comment on Victoria's plans because she didn't want to prejudge her investigation into BC Ferries.

"We have an active investigation underway that is about the practice of simultaneous posting of FOI [records]," she said.

However, Denham added she thought it would be "prudent" for Victoria to hold off on its plans until she issues her ruling on BC Ferries.

"We expect we'll be completing our investigating in the coming weeks," she said.

<http://www.vancouver.sun.com/news/government+will+begin+posting+Freedom+Information+records+online/4220122/story.html>  
cskelton@vancouver.sun.com

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## BC Ferries "transparency" comes with an expiry date

By [Chad Skelton](#)  
[The Paper Trail with Chad Skelton](#)  
Vancouver Sun  
7 Feb 2011

BC Ferries has always maintained that its [unusual policy of posting Freedom of Information records online](#) is designed to improve transparency.

While critics allege the ferry corporation is trying to discourage requests, by denying the original requester the chance to see their documents first, BC Ferries says it is increasing the public's access to information.

Just last week on Vancouver Sun columnist [Vaughn Palmer's Voice of BC show](#) (at the 45-minute point) BC

Ferries CEO David Hahn defended the policy, saying:

"I think it's open and transparent to the extreme. ... I'd rather have the public at large interpret an FOI request than a reporter who may have a certain angle, positive or negative. And I think the days of government not posting it are pretty much over. ... The original intent of FOI was for the public to have access to the information, not to provide a news person with a scoop. ... I have no sympathy for the reporters. If we're going to run an open and transparent process, let's do it all the way out."

Which makes BC Ferries latest move on the FOI front all the more puzzling: The ferry corporation has

now confirmed it will delete any trace of FOI records it posts online after just three months.

Not only will BC Ferries take down the documents themselves. It will also remove any mention of the request from its public [FOI tracker](#). Which means that Google searches that now turn up BC Ferries FOI records -- like [david hahn salary](#), [mayne island collision](#) and [bc ferries remuneration](#) -- soon no longer will.

I asked BC Ferries spokeswoman Deborah Marshall how removing FOI records from its website is consistent with transparency and public access to records.

"That's just the process we've established," she said, adding the decision was made about a month

ago. "There's a lot of information there. And 90 days is ample time to review it."

But why bother taking it down? Why not just leave it up, at least on an archive page, so people who want to can find it?

"It's basically housekeeping and maintenance," said Marshall.

Though, interestingly, not a form of housekeeping BC Ferries applies to [its news releases](#) which are archived all the way back to 2002.

Marshall said the difference is a typical news release is just one page while an FOI document can be dozens of pages long. I asked her if BC Ferries was running out of storage space on its servers. She couldn't say. Though even if it was, online storage can be bought for pennies from services like [Amazon Web Services](#).

Vincent Gogolek, executive director of the B.C. Freedom of Information and Privacy Association, said BC Ferries eagerness to delete FOI records after such a short time severely undermines its argument that the policy is all about being open and transparent.

"I think it answers the question of just how transparent they're being," said Gogolek. "You have a large corporation, 100% publicly owned, which is going through all the trouble of rushing, at great speed, to ensure that everything is up on their website as soon as possible, including sometimes before the requester gets it. But somehow or other they don't think it's important to keep it up beyond 90 days."

Gogolek notes that, in addition to making it harder for the public to find information, deleting FOI records from its website will also probably cost BC Ferries more money in the long run.

Making FOI records available online reduces redundant requests, said Gogolek. If you want to see David Hahn's employment contract, for example, you don't have to FOI it yourself -- you can (for now at least) just [grab it online](#).

"It will burn up BC Ferries resources because they will have to respond to all the people filing [requests] who don't realize that information was up there and now it's gone," said Gogolek. "As far as I can tell from looking at this, I don't

see any way in which this is increasing transparency or efficiency."

Marshall said if someone asks for information BC Ferries has already released, it will just send it out again. But that will still take its FOI coordinator time to process a new request and send out a second release.

This isn't the first controversial step BC Ferries has taken when it comes to FOI. It has taken a [hard line on fees](#) -- charging requesters for even 15 minutes of processing time -- and typically sends out FOI records [late in the day](#), when newspapers and TV stations are nearing their deadlines.

Gogolek's group has filed a formal complaint with the Information and Privacy Commissioner over how BC Ferries processes FOI requests. He said he's forwarded details on the 90-day expiry date off to the Commissioner.

In the meantime, The Sun has downloaded a copy of every FOI record BC Ferries has posted so far and is in the process of figuring out a way to ensure permanent public access to them.

## Victoria must not copy B.C. Ferries' FOI scheme

By Stanley Tromp  
The Province  
February 13, 2011

For the past 18 years, the B.C. news media have used the B.C. Freedom of Information and Protection of Privacy Act to obtain government records. I could cite hundreds of examples of such documents forming the basis for news stories in the public interest - articles on the mistreatment of persons in nursing homes and daycares, public-health risks, crime trends, hidden pollution and the gross misuse of taxpayer funds.

But if a new plan is enacted in Victoria, it could greatly reduce the

flow of such stories. This province-wide proposal was inspired by several artful practices of the B.C. Ferries Corp., which last October was placed under the coverage of the FOI law over its intense opposition.

The problem is this: On its unique "FOI tracker" website, right after it finishes processing the requests, B.C. Ferries posts the records online and sends email notices to a listserv so that anyone can read them instantly. (In some cases, it has posted them even before the requester received them.)

B.C. Ferries claims it enacted its policy solely for the sake of "transparency," but I and most FOI

users have not one iota of doubt that its main purpose is to dissuade people from making requests.

On the prospect of the core B.C. government following B.C. Ferries' practice, a spokeswoman for the Ministry of Citizen's Services confirmed to the Vancouver Sun: "It's something we're actively working on. It is imminent."

Anyone who understands the hotly competitive news industry knows that the effect of such a needless instant mass release is to scuttle the journalists' exclusive scoop, and thus simply wipe out their incentive to file FOI requests in the first place, which, in turn,

would lead to fewer stories of the kind I cited above.

B.C. Ferries' practice also raises basic questions of fairness and civility. At times, much research goes into the formulation of a well-crafted FOI request, and all that labour would now count for nothing. Moreover, why should any applicant pay thousands of dollars in FOI fees only to lose all of the records' value when government sends it out to the world to co-opt the applicant?

For all these reasons, it follows that B.C. Ferries' practices clearly violate the "duty to assist requesters" mandate found in Sec. 6(1) of the statute.

The B.C. Freedom of Information and Privacy Association, FIPA, has already complained to the Information and Privacy Commissioner, who is investigating. (She told the Sun it would be "prudent" for Victoria to hold off on its plans until she issues her ruling on B.C. Ferries.)

What I am asking for is simple, fair, doable, and essential: When the government prepares to release records in response to an FOI applicant, it must allow that applicant exclusive access to those records for a minimum grace period of two weeks before it releases the records to anyone else, or for the world to read online. (Ideally it would be a four-week period, to accommodate writers at weekly or monthly magazines.)

An even better solution would be to replicate the former CAIRS system in Ottawa for federal Access to Information Act requests. After a two-or three-month pause after release to the applicant, some departments posted just the topic headings online, instead of the full documents, and new applicants could make a new, cost-free, expedited request for those already released records. The Department of National Defence still follows this

best practice, which could be a model for B.C.

But if the B.C. government chooses to duplicate B.C. Ferries' spiteful FOI practices, this choice would backfire upon it in at least four ways.

First, it would create continuous bad-will, mistrust and conflict between the agency and applicants, including costly appeals and court actions on the failed "duty to assist."

Secondly, when B.C. Ferries began emailing records to all media -instead of letting the applicant alone process it for a day or two -it created a frenzy among some journalists to beat the online news competition by a few minutes.

Inevitably, this can -and already has -lead to serious errors spread throughout the world, which is in nobody's interest, and it also gives the agency no time to explain its side before the story runs.

Third, the founders of WikiLeaks -the state's anarchic nightmare where record release is totally unpredictable and uncontrolled -said they needed to create that website partly to compensate for failed FOI systems. If Victoria undermines the FOI process in any way, it only makes leaking documents more compelling.

Fourth, why should agencies waste time and public funds to PDF-scan and send out thousands of pages, many of them arcane and unimportant to anybody but one academic?

So to the B.C. government I plead: Please don't make a grievous mistake. Let B.C. Ferries' FOI branch sail dizzily around in its own realm.

For the public interest, don't follow its nautical route into the fog and the darkness and onto the reefs below.

*Stanley Tromp is a freelance news reporter based in Vancouver.*

<http://www.theprovince.com/news/Victoria+must+copy+Ferries+scheme/4273884/story.html#Comments>

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