

B.C. overhauling privacy laws

Changes herald shift to Internet, critics warn of personal invasion

**BY ROB SHAW
TIMESCOLONIST.COM
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The B.C. government unveiled a sweeping rewrite of the province's privacy laws that sets the stage for what it says are cutting-edge government Internet services but what critics call an erosion of personal privacy.

The changes, tabled in the legislature Tuesday, pave the way for B.C.'s new high-tech CareCards, as well as combined CareCard-driver's licences, first announced in May.

Those cards, with embedded security chips, will one day be used to access government services on the Internet, including electronic health records, age verification, proof of residency, driver's licence details, electronic voting and even school registration for children, the government said.

None of those Internet services are currently available, but are proposed after the roll-out of digital ID cards over the next five years.

"A lot of government services can't happen online, so we are going to be able to move to that," said Margaret MacDiarmid, Minister of Labour, Citizens' Services and Open Government.

Currently, a person must visit a government office and show government-issued ID before they

can do such things as change their driver's licence address or update welfare, disability and benefit payments.

The privacy bill sets in motion a goal of achieving the same thing online with a secure digital ID card and personal identification number, senior officials said in a background briefing.

The privacy bill is among the first of its kind in Canada and one of the most significant changes to B.C.'s Freedom of Information and Protection of Privacy Act since it came into effect in 1992.

Technically, the bill allows government to more easily computerize, compile, share and combine personal data across its ministries.

There is an opt-out clause in the legislation for people who don't want digital ID cards. MacDiarmid insisted no government services will be denied to those who decline, and there will be numerous steps to gain a person's consent as new services are added.

"Their card is a choice if you want to have that kind of technology," she said, adding that government surveys show a demand for such a service.

"If your choice is to not do that you don't even have to get the card. If people prefer to go in a [Service B.C. office] front counter somewhere in British Columbia they can do that."

But critics warn the changes infringe on privacy by allowing government to compile, access and share a person's most sensitive information in exchange for supposed convenience.

"The whole idea of consenting to government services in exchange for your privacy is absurd on its face," said Vincent Gogolek, executive director of the B.C. Freedom of Information and Privacy Association.

B.C.'s independent privacy commissioner, Elizabeth Denham, said the changes appear to strike the right balance between improved services and privacy protection.

"This is the step in the direction, but I think there's still a lot of work to do," said Denham.

"The devil is going to be in the details and the details are in the rules for data-linking and the rules data-sharing that aren't developed yet. My office must be consulted in the development of those rules."

Denham's office will also gain more power under the changes, including oversight of the consent process. It will also be mandatory for government to ask her for privacy assessments on future projects.

<http://www.timescolonist.com/news/overhauling+privacy+laws/550273/story.html>

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B.C. bill could open up your private information

Proposed changes would radically alter freedom-of-information law

**BY VINCENT GOGOLEK
TIMES COLONIST
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Your privacy is at risk as never before in B.C., and the immediate threat isn't coming from Facebook or

Canada's spy agency - it's a bill before the B.C. legislature.

Without consulting you, our premier and a gaggle of techno-bureaucrats have decided to sacrifice B.C.'s privacy law and radically increase their power to collect, use and share your personal information.

The government has put the pedal to the metal in trying to get a vast shift of our privacy rights in place before anyone gets a chance to say boo about it.

Bill 3, which eliminates many of the privacy protections in the Freedom of Information and Protection of Privacy

Act, was introduced Oct. 4 and has already had second reading. It could be law by the end of the month if they keep pushing.

So what is the big scary Halloween shocker?

Hiding behind euphemisms like "citizen-centred services," the government is making a big grab not just to get, but to pass around and use our private personal information as it sees fit.

Some of the proposed amendments to the FOIPP Act would make it easier for government to collect our personal information and pass that information along to other persons, "partner" organizations and other governments (including U.S. Homeland Security). They would also allow the government to bring in (at some unspecified later time) regulations to govern new "data linkages" - while exempting the entire health-care sector from those regulations.

Officials talk about how citizens are demanding convenience in dealing with government, but the convenience they are really talking about is their own.

And they are definitely not talking to British Columbians about how, when, why and with whom the government will be sharing some of our most intimate information.

Successive information and privacy commissioners have called for public consultation on government data-sharing plans. In 2009, then-commissioner David Loukidelis' annual report said: "It is certainly important that government not move forward with any legislated changes in

this area unless and until there has been a full public consultation in the form of a position paper published by the government, followed by meaningful, extensive stakeholder consultations."

A special legislative committee that recently reviewed the FOIPP Act unanimously agreed that consultation on data sharing is vital.

The government has decided against asking British Columbians what we think about its brave new world. Instead, it conducted a secret process and "province-wide focus groups and surveys to help government gain a better understanding of the public's expectations of government services," according to Open Government Minister Margaret MacDiarmid.

The supposed justification for gutting existing privacy protections is that government is now "horizontal" (managed through a variety of public and private-sector partnerships), so it needs to share information without restriction.

The other reason for the big rush is that the government has committed \$180 million to a contract with Deloitte to set up an "integrated case management" system which will allow government agents to search and manipulate personal information. It will involve a massive amount of data collection on a forced basis across the entire social services sector. Both government and non-government service providers will be required to report the personal information they gather.

These massive centralized systems have a problematic history, including in this province.

Just last month, a system to centralize information on students called BCesis was found to be an \$89-million failure.

In the U.K., the Commons public accounts committee blasted these schemes in a report entitled "Government and IT - 'a recipe for rip-offs': time for a new approach."

It's time to put an end to this government push to seize more and more of our personal information and spend more and more of our money on IT "solutions" that really aren't solutions.

It is vital for the government to start paying attention to privacy rights, and consulting British Columbians on how best to protect them.

Premier Christy Clark said: "Our government is changing the style and approach of governing to provide citizens with opportunities to influence and improve policies that impact them and their quality of life."

Maybe she doesn't think the creation of a massive data system with hundreds of millions of our dollars is one of those "policies that impacts them and their quality of life."

Vincent Gogolek is executive director of the B.C. Freedom of Information and Privacy Association.

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<http://www.timescolonist.com/opinion/bill+could+open+your+private+information/5579284/story.html>

Privacy advocates blast government over loophole in freedom of information laws

**BY ROB SHAW
TIMES COLONIST.COM
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Privacy advocates are attacking the provincial government for failing to close a loophole in its freedom of information laws.

Although the legislature is currently debating a bill that makes changes to the Freedom of Information and

Protection of Privacy Act, critics say the government has failed to address concerns over the transparency of private corporations created by public bodies such as school boards and universities.

A recent court ruling on the issue, combined with government inaction, means the public doesn't have access to records from for-profit private companies, even if they are

100 per cent owned and operated by a school district, said Vincent Gogolek, executive director of the Freedom of Information and Privacy Association.

"What we're talking about is accountability," he said.

The issue has been a particular concern for school boards, which were given the power in 2002 to create "business entities" that could

generate extra funds for school districts.

Some of those private school board companies, mainly involving international education, quickly turned into money-losing "fiascos," said Gogolek, and local taxpayers weren't able to get any information because they didn't fall under the FOI act.

The government promised to fix the issue in 2006, in the wake of a review that pointed to flaws in the system. But it never passed the necessary legislation.

The problem was compounded when Simon Fraser University won a court ruling allowing it to withhold documents from its private companies on the grounds it didn't actually have custody of the records.

The province's privacy watchdog used that court opinion to rule last week that the University of British Columbia did not have to disclose documents from its private companies.

The government was reminded of the problem in 2010, when a special committee reviewing the FOI act made a recommendation to fix the issue, said Gogolek.

But when the government introduced a bill last week that makes broad changes to the act, the issue was not addressed.

"It's a loophole that still exists," said Gogolek.

The Ministry of Citizens' Services, Labour and Open Government said in a statement that private companies created by municipal or regional

governments are covered by FOI legislation and records should be available to the public.

But that doesn't address school boards or universities.

The government had no specific reply to that issue, but in its statement, said it can choose to make a regulation to add a specific company under the FOI act if it wishes.

Debate on the bill continued in the legislature Monday.

<http://www.timescolonist.com/news/Critics+want+province+close+privacy+loophole/5599776/story.html>

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The Hook. POLITICAL NEWS, FRESHLY CAUGHT. **A TYEE BLOG**

BC Liberal changes to FOI law leave loophole open

By Andrew MacLeod
The Tyee
October 25, 2011

The British Columbia government is amending its freedom of information legislation, but is failing to close a loophole they said five years ago would be fixed.

"It's very odd the government would have a minister announce 'we are going to do this,' and then not do it," said Vincent Gogolek, the executive director of the advocacy group B.C. Freedom of Information and Privacy Association.

When public bodies such as schools or universities own companies, those companies are not subject to the Freedom of Information and Protection of Privacy Act (FOIPPA). On Oct. 18, 2006, then education minister Shirley Bond said in a [news release](#) the government accepted a recommendation to bring school-owned companies under the FOIPPA.

The change, however, was never made. So in 2010 a special committee considering the FOI act made a broader recommendation in its [report](#): "Expand the definition of 'public body' in Schedule 1 to include any corporation that is created or owned by a public body, including an educational body."

Asked why the government chose not to make the change while it is making other [amendments](#) to the act, the Minister of Labour, Citizens' Services and Open Government Margaret MacDiarmid, said, "There's many things that have come forward over the years that have not yet been addressed, and this would fall into that category."

Noting that she has been the minister responsible for one month, she said, "There are many, many recommendations that have come forward from a whole bunch of bodies that continue to be looked at." They include technical issues, legal drafting issues and the ability to consult, she said.

Including in the act corporations that public bodies own "I think it's something we need to look at," she said.

"The act is still open," said Gogolek. The legislature could fix the problem in a way that increases transparency, but the government has chosen not to, he said. "It says this is not an issue for them. They appear to be totally happy to have these entities beyond the reach of FOI."

In other situations, such as BC Ferries, the government has recognized that public scrutiny can lead to better management, he said. "We're dealing with public money here. Public money, public accountability."

Andrew MacLeod is The Tyee's Legislative Bureau Chief in Victoria. Reach him [here](#).

<http://thetyee.ca/Blogs/TheHook/BC-Politics/2011/10/25/InfoLoophole/>

Failure to produce annual FOI reports shows disrespect for law: advocate

By Andrew MacLeod
The Tyee
November 10, 2011

The British Columbia government argues it has been complying with the spirit of the freedom of information act, but an FOI advocate says the failure to file legally required annual reports for 16 years shows disrespect for the law.

"We have been proactively posting these statistics on our web site and in ministry annual reports for many years, substantively fulfilling the spirit of section 68 in the Act," a spokesperson for Margaret MacDiarmid's labour, citizens' services and open government ministry said in an email.

Yesterday The Tyee reported that the last time the government

complied with [section 68](#) of the Freedom of Information and Protection of Privacy Act, which requires the minister to submit an annual report to the legislature, was 16 years ago.

That [1995 report](#) ran to 50 pages and included various statistics, a budget for the FOI branch and an assessment of how well the law was working.

The ministry spokesperson said the government will produce an annual report on the administration of the act for 2011-2012, and meanwhile [publishes statistics](#) about FOI requests quarterly on the open government website.

"This is a legal requirement," said Vincent Gogolek, executive director of the advocacy group Freedom of Information and Privacy Association.

"You don't get to choose which parts you comply with, even if you are the government."

Failing to file annual reports for so many years sends a message to the public that the government sees itself as above the law and to public servants that the FOI act can be ignored, he said. "It creates an atmosphere of disrespect for the law generally and this act in particular, and that's not good."

Any of the province's 85 MLAs could raise the government's failure to comply with the law as a point of personal privilege in the legislature, Gogolek said. "Somebody could do that next week."

<http://thetyee.ca/Blogs/TheHook/BC-Politics/2011/11/10/LegalDisrespect/>



Noon News Hour - Waiting for Information

December 8, 2011
Global News Clip

A group is still waiting 7 years later for results from a freedom of information request.

<http://www.globaltvbc.com/video/waiting+for+information/video.html?v=2174776802&p=1&s=dd#noon+news+hour>



Birthday cake marks seven-year wait for info on government contract with IBM

THE CANADIAN PRESS 
December 8, 2011

VANCOUVER - A B.C. group that lobbies for greater access to

information has marked the seven-year wait for data on a government contract with IBM with a birthday cake.

The Freedom of Information and Privacy Association filed the request in 2004 for the \$300-million contract for IBM to supply computer support

services for the provincial government.

Vincent Gogolek, executive director of the association, said the B.C. Supreme Court has already ruled in its favour and ordered the province to release uncontentious documents.

"We've been in B.C. Supreme Court twice and there have been a number of commissioner rulings and we've won all of them," Gogolek said in an interview.

However, Margaret MacDiarmid, the province's open government minister, said Gogolek's group is requesting information that could put the private information of B.C. citizens at risk.

Earlier this year, the province handed over much of the documents in dispute, but continues to withhold information on the names of the IBM server and where they are located.

The association also wants a list of the software IBM uses to manage to computer system.

The ministry believes "a mistake has been made" in the privacy

commissioner's ruling to release the information and has asked for a judicial review, MacDiarmid said.

"The concern (is) that government systems would be made vulnerable to people hacking into them," she said. "That's the worry, a worry of a very significant security risk. Otherwise, a judicial review wouldn't have been requested."

However, the information and privacy commissioner's office disagreed.

In a ruling released a year ago, adjudicator Michael McEvoy sided with the association.

"I agree with the applicant that revealing the name of the system software does not provide a would-be criminal access to data in the province's computer system," he wrote.

"I would also add that knowing a server's location does not equate to gaining entry to it."

The case is headed back to court for the review in March.

MacDiarmid said it is highly unusual for the government to ask for a judicial review and she noted the decision in this case underlines the extent of the government's security concerns.

But Gogolek said Premier Christy Clark has often touted her commitment to openness and that the IBM contract doesn't fit into that.

He said his group's request has gone through a complicated process involving a myriad of appeals, including over IBM's concerns that its commercial interests would be harmed although they were rejected by the privacy commissioner.

"They don't like open government," he said of the government.

"Protestations to the contrary."

He predicts the association will continue fighting for the information past the 10-year life of the contract as taxpayers shell out more money for the government's legal costs.

http://www.huffingtonpost.ca/2011/12/08/birthday-cake-marks-seven_n_1137419.html

Vancouver police maintain tight control over FOI releases

Police board affirms policy of simultaneous releases

**BY MIKE HOWELL
THE COURIER
DECEMBER 15, 2011**

Mayor Gregor Robertson and the rest of the Vancouver Police Board voted unanimously Wednesday to allow the Vancouver Police Department to continue its controversial practice of simultaneously releasing classified documents to journalists and the public.

The decision was in contrast to a unanimous decision city council made in June to reconfirm the city's policy to only disclose documents from a Freedom of Information request to the applicant, unless simultaneous disclosure is requested by the person.

Under the VPD policy, a single request from a journalist is shared simultaneously with the public and, by extension, other journalists. Though the city simultaneously released documents related to the Stanley Cup riot, it has historically

only given documents to an individual applicant.

"I do support this current [VPD] policy given that public interest must trump commercial interests, particularly with regard to public safety," said Robertson, who doubles as chairperson of the police board.

"There's a bottom line here where if we're going to err on one side, it has to be towards public interest."

When asked after the meeting whether he thought journalists are working in the public interest, the mayor again repeated that journalists have "a commercial interest" and that presents a challenge when releasing information from the VPD.

"Media is in business," he said.

"There's obviously an interest in ensuring stories break and sell papers and get more viewers."

Vincent Gogolek, executive director, of the B.C. Freedom of Information and Privacy Association attended the police board meeting. He called the board's decision "outrageous" and a

contradiction of the openness practised by public bodies such as the city, B.C. Ferries and the B.C. government.

Gogolek noted B.C. Information and Privacy Commissioner Elizabeth Denham denounced simultaneous disclosure in her May 2011 report, saying it "frustrates the purposes" of the Freedom of Information and Protection of Privacy Act. Denham recommended a minimum delay of 24 hours between the applicant's receipt of the response and the time the response is publicly posted. Gogolek said the primary goal of a journalist when making a Freedom of Information request is to uncover information for the public, not to make money for a media company. He said the board's decision was done so the VPD could control the information it releases and ultimately dissuade journalists from making FOI requests.

“That’s what it’s designed to do, that’s why they love it,” Gogolek added.

The police board’s decision was based on a report conducted by board members Jason McLean and Wade Grant, who comprise the board’s FOI committee. The committee conducted the report after a request from Gogolek and his association to scrap the VPD’s FOI practice.

“The committee acknowledges that the policy may, at times, conflict with the needs of those who request information for media and/or commercial purposes,” the report said. “The committee believes,

however, that we must side with what we see as the greater public interest. The committee believes that the public interest is best served by releasing documents in a simultaneous and unedited manner, absent any claim of exclusivity or control over records held by the Vancouver Police Department.” During the meeting, McLean pointed out that privacy commissioner Denham’s recommendations regarding disclosure were not binding on the VPD. He also said the police board plans to “increase, as a matter of course, our disclosure so that to the maximum extent possible, the

public has access to good information in a timely manner.” Added McLean: “The spectre of stealing a scoop from a hard-working reporter who is acting in the best interest of the fifth estate [sic] is going to be mitigated through that process.”

It was a comment that left Gogolek perplexed.

“This does not make any sense to me,” he said.

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<http://www.vancourier.com/news/Vancouver+police+maintains+tight+control+over+releases/5867503/story.html>



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