

FIPA wins 6-year battle for \$300 million IBM contract

It's time to boost transparency by putting government contracts on line

FIPA has won an important victory that could force the BC government to routinely release contracts it makes with private sector organizations. It looks like we may finally get the full results of an FOI request we filed in 2004 – a complete copy of the \$300 million Workplace Services Agreement with IBM.

It has been a long-term goal of FIPA to see that all agreements where government services are 'outsourced' or delivered via public-private partnerships are made public. And it also looks like the government has finally run out of excuses for not doing so.

Why should government contracts be public? Because ensuring the transparency of public contracts and other expenditures is the best possible way to guarantee these arrangements are honest, free of conflicts of interest, and the best possible use of public dollars.

Government arguments shot down

FIPA put in its FOI request for the then-new IBM agreement six years ago. The BC government and IBM fought tooth and nail ever since to keep the contract from being released.

First came the procedural arguments. "We can't release anything until each and every question is resolved", said the government.

Then they argued that releasing the remaining parts of the contract would allow hackers to bring down the government's computer systems. The Information and Privacy Commissioner's adjudicator wasn't buying it:

[17] I also note the Ministry's submissions impliedly acknowledge that, even without the disclosure of the requested information, a hacker could guess it. It stretches credibility to believe the Province's security system is so fragile that its breach is more likely than not based on a mere guess.

As for the argument that, if the contract was released, contractors would be much less likely to take part in bidding for these multi-million dollar deals: the adjudicator stated, "The Ministry's submission that vendors will not negotiate future ASD contracts is not compelling." He went on to say that other evidence the government provided *in camera* was "speculative, at points contradictory and on other occasions uncorroborated hearsay."

This decision by the Office of the Information and Privacy Commissioner is the latest and most comprehensive in a series of orders that have shot down every excuse used by government to avoid releasing contracts with private sector bodies.

Put contracts on line!

All this means that public bodies covered by the *Freedom of Information and Protection of Privacy Act* have no reasonable arguments for not releasing contracts in response to FOI requests.

Which begs the question – Why should the public have to file FOI requests to see these contracts? Government certainly has the technology to put them on line for anyone interested. Any legitimate exceptions under FOIPPA would apply and excepted content would be removed from a contract before posting.

As citizens we need information about government activities to hold our governments to account for their actions. There is no doubt that greater public scrutiny keeps everyone on their toes and results in better deals and better public policy, whether it is the public or private sector that does the work.

When the rulings were handed down on last week, Information and Privacy Commissioner Elizabeth Denham stated "These decisions demonstrate that public agencies should consider

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the routine release of these types of outsourcing contracts. Proactively releasing these contracts would save everyone considerable time, money and paperwork.”

Amen! FIPA has called for more pro-active release of government information for years, and it has been a constant theme of Legislative committees that regularly examine the *Act* to recommend improvements.

The Minister responsible for FOI, Mary McNeil has raised the possibility that the government might begin posting these contracts online, although she also left open the possibility of spending more public money to challenge the

decision in BC Supreme Court (We've already been to court once over this issue).

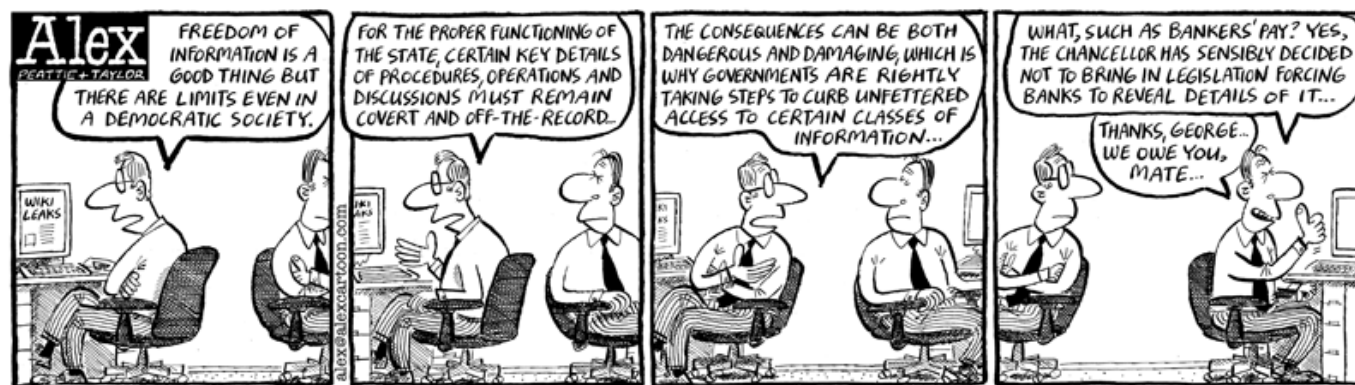
If any Liberal leadership candidates are looking for a way to make a break from the past, save the government a pile of money and help make government work better, they should state unequivocally that they will post all government contracts, instead of waiting for Wikileaks or a BC equivalent to do it for them.

Commissioner's order:

<http://www.oipc.bc.ca/orders/2010/OrderF10-39.pdf>

Commissioner's news release:

<http://www.oipc.bc.ca/news/2010Releases/NR-CompassFIPAorders.pdf>



FIPA to start 2011 with new Executive Director

On January 1, Vincent Gogolek, FIPA's current Policy Director, will assume the role of executive director, taking over from long-time ED Darrell Evans.

This transition has been in planning for two years. Darrell will provide management and communications support during 2011 to ensure that the transition goes smoothly.

Vincent has worked for FIPA for more than two years – as a consultant and then as staff – during which time he has earned the total confidence of Darrell and FIPA's board of directors.

Vincent's background is very diverse and is tailor-made for his leadership role with FIPA. He has degrees in Law (University of Ottawa) and Journalism (Carleton), and a diploma in International and Comparative politics from the London School of Economics. His work history includes stints as in journalism, law and intergovernmental affairs. He has been a lawyer

with legal aid organizations in BC and Ontario and Policy Director of the BC Civil Liberties Association. He is bilingual (English and French).

New information policy 'think tank' in works

Darrell Evans' efforts during 2011 will be divided between his supporting role in FIPA and starting a charitable think-tank called the Canadian Institute for Information and Privacy Studies (CIIPS).

Creating CIIPS has been a FIPA goal for years. It should help fill what the directors and staff have long considered to be a gap in the capacity of Canadian educational and civil society organizations to do vital research and public education on FOI and privacy issues.

If you are interested in helping FIPA or CIIPS carry this work forward in Canada, please contact us at the FIPA office, 604-739-9788 or fipa@vcn.bc.ca. Donations can be made to FIPA by clicking on the secure 'Donate' button on our website at <http://fipa.bc.ca/>.

BC Ferries FOI policy thwarts requests from advocacy groups and media

"We rarely have reason to thank this government for increasing transparency," Darrell Evans said last May, "so it's important to recognize the Premier and his government for this move."

That was the statement FIPA released when BC Ferries was brought back under the FOI act. The company had been removed from the freedom of information law in 2003 as part of a massive re-organization of the company.

But BC Ferries is not going blissfully into its new era of corporate transparency. The corporation has set up an FOI management system that is, in our opinion, designed to discourage FOI requests, especially those from public interest groups and the media.

The new policy states that any records released to requesters will immediately be posted on the BC Ferries website. The result will be that requesters will be deprived of first use of the information they obtained and a large part of the motivation for making FOI requests.

FIPA has filed a complaint about the policy with Information and Privacy Commissioner Elizabeth Denham, stating that it "...considers this policy to be a pre-emption of the rights of requesters and highly destructive to the purposes and proper functioning of the Act."

The BC Ferries policy works this way:

- Requesters will be required to go through the normal processes for FOI requests.

- BC Ferries charges fees to the person requesting the information, to the maximum permissible in every case.
- Any released records are posted to the BC Ferries website. If requested electronically, the requester will receive them at the same time they are posted. If sent in hard copy, the records will be posted within 24 hours of the records being mailed to the requester.
- BC Ferries sends a news release telling the media what records have been released and where to find them.

"It's outrageous for BC Ferries to charge fees while refusing to do their legal duty to assist requesters," said FIPA policy director Vincent Gogolek. "What public interest group or media outlet will take on the arduous task of working through the FOI request process and paying what are often ridiculous fees if the records they ask for are put up on BC Ferries website first?"

"The eventual outcome will be a huge drop in requests, resulting in little information actually being available to the public."

Although BC Ferries may try to spin this plan as transparency or routine release, they have not previously put up any information that should be routinely released, such as the salaries, benefits and expenses of senior management. The Comptroller General pointed to inflated costs in this area as a rationale for putting BC Ferries back under FIPPA.

FIPA asks for investigation of false claims of "no records" by government

At FIPA's request, BC's Information and Privacy Commissioner has begun an investigation into what appear to be false claims that there were "no responsive records" to requests made under the freedom of information act.

FIPA had made an FOI request to the Office of the Premier for records of discussions about the creation of a HST in BC. We were informed that there were "no responsive records", but it was later revealed that various media outlets received HST-related documents, including briefing notes for a First Ministers' Meeting.

FIPA is concerned that the "no records" claims are part of a disturbing trend identified in the Commissioner's latest report.

The report notes that an increasing number of FOI requests are returning with a claim of 'no responsive records'. FIPA has experienced similar problems with other requests, and has received a number of complaints from other requesters encountering similar difficulties.

FIPA's letter to the Commissioner is at http://fipa.bc.ca/library/Letters/FIPA_request_to_OIPC_for_investigation-Sept_2_2010.PDF

Third BC Information Summit a big success

More than 150 people from all walks of life attended the third **BC Information Summit** on September 29 – pretty much a sell-out crowd for the Theatre at UBC Robson Square campus.

The summit featured three expert panels on freedom of information and privacy issues and the highlight was the maiden speech of BC's new

Information and Privacy Commissioner, Elizabeth Denham. Her speech is available at [http://www.oipc.bc.ca/pdfs/Speeches/BC%20Information%20Summit%20\(29%20Sep%2010\).pdf](http://www.oipc.bc.ca/pdfs/Speeches/BC%20Information%20Summit%20(29%20Sep%2010).pdf)

We wish to thank our co-presenters and the sponsors of the Summit – see <http://infosummit.ca> for details.

Legal actions

Black hole grows: Submissions to gov't consultations are now 'policy advice'

The BC Supreme Court has upheld a ruling by BC's Information Commissioner that submissions made to a government consultation may be classified as "advice or recommendations" to a Minister and therefore kept secret from the public.

Justice J. Miriam Gropper refused to overturn an adjudicator's order that the Ministry of Citizens' Services was entitled to keep secret the responses to a consultation about amending, ironically, the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

FIPA's pro bono counsel Tam Boyar and Christine Joseph argued that responses to the government consultation were not advice, but submissions by interested groups hoping to advance their positions.

Interestingly, the government's lawyers stated during the proceeding that, to prevent the government from using their expanded definition of advice, the current wording of the law would

have to be changed. The lawyers even provided possible wording.

This shows the absurd lengths to which the government will go in keeping information about their policy decisions under wraps. It is time for the government to listen to FIPA, the Commissioner and numerous others (now including their own lawyers), and change the law."

FIPA fights in Supreme Court of Canada

For the first time ever, FIPA has received leave to intervene in a case in the Supreme Court of Canada. The case comes out of Alberta, but will have national implications.

The Alberta Court of Appeal decided 2-1 that if the Commissioner did not extend a hearing within 90 days, the complaint is finished. FIPA does not think people whose rights may have been violated should lose their right to a fair, impartial hearing because of a technicality over which they have no control. Hopefully the Supreme Court will agree.

The Organization

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home page, and it is a secure transaction. We have arranged that only the minimum amount of information required to process the credit card transaction is collected. Regular cheque processing is still available for anyone who doesn't want to use the on-line facility.

FIPA would like to thank the Law Foundation of BC, the Notary Foundation of BC and the Province of British Columbia for supporting FIPA programs

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