

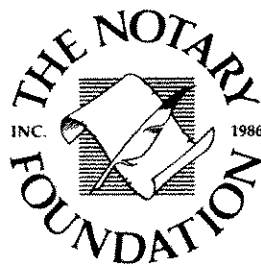
IFIPA

BC FREEDOM OF
INFORMATION
AND PRIVACY
ASSOCIATION

**Annual Report for
2010**

April 6, 2011

The BC Freedom of Information and Privacy Association
wishes to thank the Law Foundation of BC
and all our other donors and funders
for their support of our information and privacy programs.



B.C. Gaming and Enforcement
Branch of the Ministry of Public
Safety and Attorney General

AN OVERVIEW OF FIPA

Even in the most egalitarian of democracies, human affairs and public decision-making tend to be dominated by those who have superior access to information and greater control over the flow of information.

As a consequence, the need and the demand for what we call “**information rights**” — specifically freedom of information and privacy rights — become more pressing every day.¹

The increasing push for information rights is driven by three powerful trends. First, by the radical transformation the world is undergoing due to information technology. Second, by the need to constantly adjust the balance of power between governments and the public in modern democracies. And third, by increasing public expectations of fairness, transparency, and participation in public decision-making.

The BC Freedom of Information and Privacy Association (FIPA) was incorporated as a non-profit society in January 1991 in order to advance the principles of freedom of information and privacy protection in B.C.

20 years later, FIPA is widely known for its successful campaign to get BC's *Freedom of Information and Protection of Privacy Act* (“FOIPP ACT”) passed in 1992, followed by Alberta's FOIPP Act in 1993, and for keeping FOI and privacy issues high on the political agenda ever since. FIPA is highly respected for its ceaseless promotion of FOI and privacy rights in BC and across Canada.

FIPA Activities

Assisting the Public

FIPA has provided thousands of individuals and organizations with information and advice

about access to information and privacy issues. In particular, we offer citizens advice on how to exercise their information rights.

Public Education

FIPA provides public information and education on FOI and privacy issues and legislation through public events, articles, publications and of course, responding to direct inquiries from the public,

Over the last 20 years, we have:

- issued more than 55 studies, reports and other publications on information rights issues, including two soft cover books, and
- produced 178 seminars, workshops and other events, including 14 major conferences.

Legal and Policy Research

FIPA is a centre for legal and policy research into freedom of information and privacy issues. In addition to conducting our own studies, we provide research assistance to academics, lawyers, journalists, students and the general public. Our library of books, articles, research papers and subject-indexed files is open to serious researchers.

Public Interest Advocacy and Law Reform

FIPA is Canada's major public interest advocacy and “watchdog” group for FOI and privacy issues. We promote continuing law reform in these areas where our members and supporters feel it is needed.

We constantly monitor the performance of government bodies and Canada's Information and Privacy Commissioners, and are consulted frequently on policy issues by politicians and government officials.

Legal Advocacy and Litigation

FIPA engages in legal advocacy before BC's Information and Privacy Commissioner and Canadian courts, and operates a modest legal assistance program for people with serious privacy and FOI problems.

¹ **Freedom of information, privacy protection and information rights** are defined on the last page of this report.

HIGHLIGHTS – 2010 IN REVIEW

FIPA's mission is to protect and advance the freedom of information and privacy rights of people in BC and throughout Canada, through our programs of legal aid, public legal education, legal research and law reform.

Every year, FIPA's Board of Directors and staff set out the goals and objectives we hope to achieve that year. The following table documents our progress on the objectives we set for 2010

<i>Main objectives for 2010</i>	<i>What we achieved</i>
<p><u>Public Information and Legal Assistance:</u> To increase the quantity and quality of our public information and legal aid services.</p>	<p><i>Provision of legal information and assistance more than doubled in 2010.</i></p>
<p><u>Public Education:</u></p> <ul style="list-style-type: none"> • To enhance the Public Legal Information content on the FIPA website by completing our part of the PLEI Portal Project. • To present at least two public education events during 2010 • To increase our delivery of speeches and media interviews • To maintain the FIPA news service and the FIPA Bulletin for members • To maintain the National Privacy Coalition Listserv, Canada's major national electronic network of privacy advocates and professionals. 	<p><i>We completed corrections on our FOI and privacy HELP pages, which we consider to be the best on the Web.</i></p> <p><i>We held 3 educational events in 2010 and participated in two others.</i></p> <p><i>Number of people addressed was down; media interviews were up.</i></p> <p><i>Number of releases and subscribers increased. Number of FIPA member bulletins increased.</i></p> <p><i>The NPC Listserv was maintained, with a slight increase in membership.</i></p>
<p><u>Law Reform Objectives:</u></p> <ol style="list-style-type: none"> i) Positive reform of BC's <i>Freedom of Information and Protection of Privacy Act</i> and the 'culture of denial' that has evolved toward some types of FOI requesters and requests. ii) Restoration of adequate funding for FOI administration within government. iii) Increased privacy rights for the public vis-a-vis the BC government's E-Health program. (This program will centralize control of individual health records in a system of Electronic Health Records.) 	<p><i>No major FOI reforms were introduced in 2010.</i></p> <p><i>Commissioner's funding has improved but remains inadequate.</i></p> <p><i>FIPA continued to push for increased E-health privacy rights with our Health Privacy Coalition partners.</i></p>

<p>iv) Increased privacy rights for the public vis-a-vis the BC government's proposed "Integrated Case Management" program. (This program will encourage and facilitate the sharing of citizens' personal information among government ministries, and extend this 'information grab' to contracted providers of social services outside government.)</p> <p>v) Better access to, management of, and preservation of government records and archives in BC.</p> <p>vi) Reform of the federal <i>Access to Information Act</i>, bringing it closer to the standards of more liberal provincial FOI acts.</p> <p>vii) Effective opposition to federal anti-terrorism legislation and other initiatives that infringe excessively on access to information and privacy rights – including:</p> <ul style="list-style-type: none"> • Proposed new copyright legislation; • Bill C-46, <i>the Investigative Powers for the 21st Century (IP21C) Act</i>, and Bill C-47, <i>the Technical Assistance for Law Enforcement in the 21st Century Act</i> (initiatives to increase "lawful access" – i.e. increased surveillance of the Internet by law enforcement and security forces); • the "No-fly list"; and • Creation of a de facto national identity card in the form of a so-called "Enhanced Drivers License". 	<p><i>We had moderate success publicizing the ICM 'problem' and facilitating awareness among community service agencies and clients.</i></p> <p><i>An ongoing battle.</i></p> <p><i>Another ongoing battle. No success this year.</i></p> <p><i>The efforts of FIPA and our partners definitely have had a major impact on all these legislative initiatives, mitigating many of the worst proposals and helping to prevent passage of several.</i></p> <p><i>(Our partners are the BC Civil Liberties Association, the Canadian Internet Policy and Public Interest Clinic, International Civil Liberties Monitoring Group, the Public Interest Advocacy Centre, and Canadian Civil Liberties Association.)</i></p>
<p><u>Legal and Policy Research:</u></p> <p>We will undertake research projects in support of our 2010 law reform objectives.</p> <p>In particular, we will commission research into best practices for many aspects of government information and records management.</p>	<p><i>Done.</i></p> <p><i>Deferred to 2011 because of workload.</i></p>
<p><u>Legal Advocacy/ Litigation:</u></p> <p>We will advance FOI and privacy rights through legal advocacy in reviews before the Information and Privacy Commissioner and other courts where necessary.</p>	<p><i>Our legal advocacy efforts before the Commissioner and in the courts reached an all-time high in 2010.</i></p>
<p><u>Organizational goals:</u></p> <ul style="list-style-type: none"> • continue the transition to a new executive director. • To find additional sources of funding for core FIPA activities through the efforts of our contracted personnel and volunteers. • To maintain and expand the FIPA board of 	<p><i>A new FIPA ED was installed on January 1, 2011</i></p> <p><i>Funding efforts were diversified, with grants obtained from the federal Department of Justice and the Alberta</i></p>

directors to include a broad diversity of stakeholders, community links, and professional backgrounds.

- To continue to build FIPA’s membership.
- To improve FIPA’s management and administrative procedures, including accounting and performance feedback and reporting.

Law Foundation.

The FIPA board acquired three new directors and we enjoyed a modest gain in membership numbers.

FIPA upgraded administrative and bookkeeping practices and improved outcome measurement reporting.

PEOPLE SERVED, 2007 – 2010

	2007	2008	2009	2010
Helpline / casework	360	438	399	462
Legal assistance	11	13	16	42
Visitors to website “Help topics”	9,004	11,390	12,066	13,145
Media interviews	90	88	108	118
Public Events (number of attendees)	177	168	616	255
Speaking engagements	1,135	653	490	319
National Privacy Coalition Listserv	126	142	142	145
FIPA member & information services	344	304	481	522
Website visits other than ‘Help’ (includes publications downloaded)	78,044	89,488	90,510	106,439
Total people served	89,291	102,684	104,828	121,447

PUBLIC SERVICES

Public assistance/ legal aid

Helplines: During 2010, FIPA provided personal assistance to approximately 462 people through our telephone and Internet help lines, a 16% increase over 2009.

Website: People find tips on FOI and privacy rights and how to exercise them by visiting the “Help Topics” on FIPA’s web site (<http://fipa.bc.ca/home/>). During 2010, a total of 13,145 people visited these topics, an increase of about 9% over 2009.

Legal Assistance

FIPA provided legal information or assistance for 42 people during 2009.

These services range from providing advice on FOI and privacy laws and how to use them, to obtaining legal aid for clients. We have working agreements with three outside providers of legal aid: Access Pro Bono, the Community Legal Assistance Society, and the Public Interest Advocacy Centre. In addition, about eight lawyers donate pro bono legal advice and representation to FIPA and our clients on an ad hoc basis.

PUBLIC EDUCATION

Educational Events

The 2010 BC Information Summit

FIPA's big event of the year was the third BC Information Summit, which was held on September 29 during 'Right to Know Week in Canada'. These gatherings are our most important forum for public legal education on the critical FOI and privacy issues of the day.

The 2010 summit dealt mainly with critical FOI and privacy issues that arose during the legislative review of BC's *Freedom of Information and Protection of Privacy Act*. The theme was '**TRANSPARENCY TURNAROUND: When public information goes private and personal information goes public**'.²

The summit, which was held at UBC Robson Square Theatre, drew 160 people. The event received very good reviews from attendees and was a financial success as well, earning a surplus of about \$4,000.

Speakers included Elizabeth Denham, BC's new Information and Privacy Commissioner (for her maiden speech) and a well-balanced roster of speakers from government, the legal sector, public interest groups, media and academia.

Workshop – Provincial Training conference for Legal Advocates

Vincent Gogolek conducted a Workshop for legal advocates on FOI and privacy issues, including the Integrated Case Management system that is being planned by the provincial government. Approximately 20 people attended.

Stakeholder meeting for the “Privacy Rights and Your Personal Health Information” project

We held this meeting on November 18 to get input from stakeholders and guide the

creation of a website about health privacy rights in BC, especially as concerns the system of electronic health records (EHRs) that is being instituted in the province. This project is funded by the Law Foundation of BC. The meeting was held at the Peoples' Law School and drew about 20 attendees.

Panel on Electronic Medical Records and Privacy

We organized a panel on the privacy issues pertaining to electronic medical records June 26 on this issue for the Health Libraries Association of BC. The panel included representatives of the College of Physicians and Surgeons, BC Medical Association, Office of the Information and Privacy Commissioner and BC Civil Liberties. About 20 people attended.

Workshop on FOI, Privacy and the review of the FOIPP Act

We held a workshop on January 14 for groups wishing to make submissions to the Special Committee to Review the *Freedom of Information and Protection of Privacy Act*. About 15 people attended.

FIPA Website

FIPA's website traffic continues to rise gradually. We logged a total of 106,439 visitors and 750,757 hits in 2010 – an increase of about 16% over 2009.

New HELP pages

FIPA's "FOI AND PRIVACY HELP" pages provide detailed information and tools for people needing direction on how to make FOI requests, privacy complaints, and requests for access to their own personal information that is in the custody of public and private sector organizations. We consider it to be the best resource of its kind on the World Wide Web.

² Website: <http://infosummit.ca/>

Speeches and presentations

FIPA representatives addressed a total of 319 people during 2010.

News releases and media interviews

During 2010, FIPA held one news conference, issued eight news releases and

published two newspaper opinion pieces. Our representatives gave 118 interviews to media outlets.

FIPA Bulletin and electronic news service

We sent out three member bulletins and 25 news alerts from our email news service in 2010.

REPORTS AND SUBMISSIONS

Submissions on Review of the Freedom of Information and Protection of Privacy Act

FIPA's submission to BC's Special Committee to Review the *Freedom of Information and Protection of Privacy Act* is our blueprint for reforms that are necessary to restore the FOIPP act to its original intent and effectiveness. The submission was made in February 2010 and is available at [http://fipa.bc.ca/library/Reports and Submissions/FIPA sub to FOIPPA rvw committee-Feb 2010 CORRECTED.pdf](http://fipa.bc.ca/library/Reports_and_Submissions/FIPA_sub_to_FOIPPA_rvw_committee-Feb_2010_CORRECTED.pdf)

The Hallmarks of Fairness: Improving Alberta's Freedom of Information and Protection of Privacy Act

Alberta's *Freedom of Information and Protection of Privacy Act*, like BC's, requires that the act receives a regular review by a committee of the Legislature.

When we learned there were few if any public interest advocates planning to appear before the Alberta legislature committee tasked with the review, we decided it was important that FIPA take on the public interest role, and the Alberta Law Foundation generously provided a grant that enabled us to commission the work.

The Hallmarks of Fairness, researched and written by Stanley Tromp, is our contribution to hoped-for reform of Alberta's FOIPP Act. It is available at [http://fipa.bc.ca/library/Reports and Submissions/FIPA sub to Alberta FOIPPA review-June 2010.pdf](http://fipa.bc.ca/library/Reports_and_Submissions/FIPA_sub_to_Alberta_FOIPPA_review-June_2010.pdf)

[ssions/FIPA sub to Alberta FOIPPA review-June 2010.pdf](http://fipa.bc.ca/library/Reports_and_Submissions/FIPA_sub_to_Alberta_FOIPPA_review-June_2010.pdf)

Election Chill Effect: The Impact of BC's New Third Party Advertising Rules on Social Movement Groups

FIPA conducted a "Free to Speak Campaign" in 2009 that criticized BC's revised *Election Act*. Our concern was and continues to be the Act's negative impact on the free speech of individuals and groups who may wish to comment on political issues. Certainly, there is no time when our right of free speech is more important than during election periods, when access to information is critical for active engagement in the democratic process.

We urged reform of *Election Act* provisions we consider to be hugely misguided. They stifle free speech during election periods by organizations who spend little or nothing on what is commonly thought of as 'election advertising', endorse no candidates or parties, and do nothing more than continuing their usual communication activities.

Our participation in the *Election Chill Effect* study was an extension of our work on this front. This study, authored by Shannon Daub and Heather Whiteside, was co-released on October 6 by the Canadian Centre for Policy Alternatives, FIPA and BC Civil Liberties Association. It is available at <http://www.policyalternatives.ca/publications/reports/election-chill-effect>

The study found that BC's third party advertising rules caused extensive

problems for “small spenders” such as non-profits and charities during the 2009 provincial election. The rules – brought in through the controversial Bill 42 in 2008 – led to widespread confusion, wasted resources, anxiety and self-censorship among organizations that spent little or nothing at all on actual election advertising.

Feasibility Study and Business Plan for the Establishment of a Canadian Support Centre for Victims of Identity Theft

FIPA received a grant of \$53,810 from Justice Canada (DOJ) to do a feasibility study and business plan on the founding of a Canadian Identity Theft Resource Centre. The 111-page study/plan was completed and delivered to DOJ in April.

The document is just what it states: a comprehensive formula for the establishment of a information and service centre for victims of identity theft and fraud. Our conclusions are that it would be very feasible to create such a centre and that there is immense support for the idea across a wide span of stakeholders – government, law enforcement, academia and the business/commercial sector.

After profound deliberation within FIPA, we decided NOT to proceed with the next phase of the project to establish a centre.

The conclusion of the FIPA Board and staff was that this project was, quite simply, too big for us. It would involve a budget vastly larger than FIPA’s and even the task of overseeing it, with the legal responsibility for the project outcome and the potential

financial liabilities would have the potential to overwhelm our limited staff resources and take us away from our primary mission of law reform, public legal education, etc.

In the end, we invited the consultant who executed the study/plan to proceed to the next phase with our blessing and support. We are happy to report that he seems to be doing so successfully.

Culture of Care or Culture of Surveillance? Personal Privacy and the BC Government’s Planned Integrated Case Management System

This report, funded by the Law Foundation of BC, was released at a news conference on March 31 and is now helping create a public dialogue about the data-matching plans of the BC government called “Integrated Case Management”. The report is available on a website dedicated to the project at <http://www.privacyresearch.ca>

Video Surveillance in Schools: Joint Submission of BCCLA and FIPA to the Legislative Assembly on Bill 20 – 2010 Miscellaneous Statutes Amendment Act (No. 3), 2010

A provision in a miscellaneous statutes amendments bill (Bill 20) will allow school boards, in consultation with school planning councils, to install and operate video surveillance in schools for purposes of safety or protection of property. The BCCLA and FIPA urged the Legislative Assembly not to pass the amendments in a joint report that may be viewed at <http://www.bccla.org/pressreleases/10CCTV.html>

LEGAL AND POLICY RESEARCH

FIPA has 16 FOI requests in progress with public bodies for research purposes. They are at all stages, from initial request, through appeals to the Information and Privacy Commissioner, to judicial reviews at the BC Supreme Court. Here are some of the issues FIPA researched in 2010, stemming from complaints we received or our own inquiries:

Complaint or issue	Action taken / result
<p>Access to Information under the BC Liberal Administration, 2001-2011</p>	<p>FIPA commissioned researcher Stanley Tromp to begin research toward producing a critical summary of the BC government's performance in providing public access to information through FOI, proactive disclosure and all other methods and media they employ.</p>
<p>Proposed amendments to the federal Copyright Act: The federal government introduced Bill C-32, <i>An Act to Amend the Copyright Act</i>, in response to heavy lobbying by industry groups. Some amendments are highly controversial, and merited greater study by FIPA.</p>	<p>FIPA is prepared to make formal submissions when Bill C-32 goes to committee. We have endorsed the <i>Consensus Submission to the federal government consultation on a Digital Economy Strategy for Canada</i> and participate in the Fair's Fair Coalition.</p>
<p>Key Exceptions of the Freedom of Information and Protection of Privacy Act: Our Policy Director did extensive legal research into the FOIPP Act's exceptions for Cabinet Confidences and Policy Advice, and the "Public Interest Paramount" section.</p>	<p>Our recommendations for strengthening the "Public Interest Paramount" section were endorsed by the Special Committee to Review the FOIPP Act.</p>
<p>Bill 11 and government collection and sharing of personal health information: This bill amended three pieces of health legislation, giving the government extraordinary powers to requisition personal health information, bypassing the restraints intended by the <i>e-Health Act</i>. We studied the bill for our own purposes and at the request of the Official Opposition.</p>	<p>With our partners in the Health Privacy Coalition, we continue to research government intentions, actions and legislation. We reported our conclusions to the Opposition and public and are developing strategy for future action.</p>
<p>Bill 14, the Motor Vehicle Amendment Act, 2010: Proposed amendments to s. 230 of the <i>Motor Vehicle Act</i> will require health professionals to report medical conditions or functional impairments, as set out in regulations, of patients 16 years or older <i>regardless of whether the person has a driver's license, intends to apply for a driver's license or intends to drive at all with or without a license.</i></p>	<p>We did legal analysis of this bill for disability groups at their request and provided background information to the media and Opposition.</p>
<p>FOI staffing: We contend that some of the current dysfunction in BC government compliance with the FOI act is due to successive staff cuts and administrative changes made to the information and privacy offices of ministries since 1998, and that the under-funding is deliberate.</p>	<p>We made FOI requests for critical information, received an inadequate response, and appealed for review to the Information and Privacy Commissioner. The review is still underway.</p>
<p>Olympic Surveillance legacy: Vancouver and other municipalities will receive an extensive legacy of video surveillance equipment after the Olympics. We are using FOI requests and other inquiries to ascertain what is in the works.</p>	<p>FOI requests have been made to the Cities of Vancouver, Whistler and Richmond, the Vancouver Police Department and the RCMP. The RCMP has committed to return the 900 leased cameras, but their command centre will continue to exist.</p>

Video Surveillance on Skytrain: This research is complete; we know precisely what future plans are for expansion of video surveillance on Skytrain.

We met with Translink to discuss both bus and Skytrain surveillance. We are discussing co-operative action with BCCLA.

LAW REFORM

Statutory Review of the Freedom of Information and Protection of Privacy Act

A special committee of the BC Legislature completed a mandated six-year review of the FOIPP Act and delivered its report to the Legislature on May 31, 2010.

The FOIPPA review was FIPA's highest priority while it ran and we were active participants both in the field and before the committee. We prepared our own submissions, organized a workshop, assisted other submitters, created publicity around the review and 'rallied the troops' so that submissions supporting freedom of information and privacy rights were not vastly outnumbered by public bodies seeking to reduce transparency and privacy protection.

FIPA's activities had a positive result: At our prompting, a truncated deadline for submissions was extended twice to a final date of March 15, 2010 and we facilitated the production of a number of pro-reform submissions.

In the end, at least eight recommendations made by FIPA in our submission were adopted by the special committee and the committee's report was largely supportive of the FOI and privacy reform agenda advanced by FIPA, the Information and Privacy Commissioner and other stakeholders.

However, the report also makes three recommendations that are extremely negative for FOI and privacy rights. We are very intent on preventing those three from being adopted by government, while we look

for every avenue to support the positive recommendations.

Action vs. Government plans to merge personal information into 'citizen-centered' files

The BC government plans to vastly increase the sharing of citizens' personal information across government ministries, with other levels of government, and with a multitude of its private sector 'partners' in the delivery of government programs. The system is called "Integrated Case Management" (ICM). In this unprecedented plan, the personal information collected will be centralized in 'citizen centered' files under the control of the provincial government, and shared at its discretion.

This planned transformation of the way government manages information and services has been given the name 'Government 2.0 – Citizens @ the Centre', and you will be hearing a lot about this over the next year.³

To achieve this vision, the responsible Ministry (Citizens' Services) has called for radical changes to BC's Freedom of Information and Protection of Privacy Act.

FIPA first became aware of this breathtaking vision while participating in a two-year consultation regarding the government's project to create a system of electronic health records (EHRs) for every client of the BC health care system. We learned that the electronic 'spine' that was being built to

³ *IM/IT ENABLERS STRATEGY FOR CITIZENS @ THE CENTRE: B.C. GOVERNMENT 2.0*
http://www.gov.bc.ca/citz/citizens_engagement/it_strategy.pdf

manage EHRs would also form the infrastructure for managing all flows of personal information across government.

This is the privacy challenge of the decade, and to us, the stakes could not be higher. The government's actions bring into question the reality of any right of privacy between citizens and the State, and the very nature of the relationship between free citizens and the State.

FIPA's activity throughout 2010 largely consisted of consulting, researching, writing, lobbying, disseminating information and organizing action around EHRs, Integrated Case Management and "Citizen Centered files". Our work was centered on the release of *Culture of Care...or Culture of Surveillance?* (see above) and our submissions to the Special Committee to Review the FOIPP Act.

We released the Culture of Care report at a news conference on March 31, and significant news coverage followed. The report is available on the project's dedicated website at www.privacyresearch.ca.

On February 11, FIPA sent a letter to Premier Campbell to protest the government's dedication of \$180 million to the ICM Program, in spite of calls by the Information and Privacy Commissioner and FIPA to pause the program while a full public consultation takes place and all outstanding legal, ethical and procedural questions are answered.

EHRs, ICM and the BC government's other data collection and matching plans were a featured topic at the third BC Information Summit in September.

FIPA, the United Community Services Co-op, and a growing number of concerned managers in community-based service groups are gradually organizing a counter-movement to ICM plans. Our goal is to publicize the ICM Program as widely as possible, bring the issues we have raised into the public square, and push for adoption of the *Culture of Care* report's 11 recommendations.

We have laid the groundwork for what we hope will be effective action to force the government to:

- reconsider its approach to citizen-centered files and data sharing in general;
- abandon its plan to eradicate the privacy protections in the FOIPP Act;
- conduct a proper dialogue with citizens over its approach to privacy rights and privacy protection; and
- resolve all the ethical, legal and procedural problems regarding EHRs, Integrated Case Management and Government 2.0.

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

At the end of 2010, FIPA won a long battle for access to the BC government's \$300 million contract with IBM for "Workplace Support Services."

It has been a long-term goal of FIPA to see that there is transparency for all contracts where government services are 'outsourced' or delivered via public-private partnerships. This is to ensure such arrangements are honest, free of conflicts of interest, and make the best possible use of public dollars.

The Information and Privacy Commissioner's order in favour of FIPA 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 organizations.

Our quest for the IBM contract (and three other major agreements) started with an FOI request in December 2004. After a long mediation period, the government appealed an initial decision of the Commissioner to the Supreme Court, which ruled in favour of FIPA's arguments for release and referred the matter back to the Commissioner for a final ruling.

FIPA won conclusively on all points and the Adjudicator ordered the release of the entire contract by January 11, 2011. In a press

release accompanying the ruling, Commissioner Elizabeth Denham stated "These decisions demonstrate that public agencies should consider the routine release of these types of outsourcing contracts. Proactively releasing these contracts would save everyone considerable time, money and paperwork."

Mary McNeil, the Minister responsible for FOI at the time, raised the possibility that the government might begin posting these contracts online.

- An opinion piece on this issue by Vincent Gogolek was published in the Vancouver Sun on December 3. See http://fipa.bc.ca/library/Articles/Province_loses_fight_to_keep_IBM_deal_secret-Dec_3_2010.doc
- **Commissioner's order:** <http://www.oipc.bc.ca/orders/2010/OrderF10-39.pdf>

Calls to bring BC Ferries back under the FOI Act succeed, but problems remain with procedures

In 2009, FIPA, the BC Civil Liberties Association, and the Canadian Taxpayers Federation sent a letter to Premier Gordon Campbell calling for the return of BC Ferries to the coverage of the Freedom of Information and Protection of Privacy Act. BC Ferries had been removed from the FOI law in 2003 by the Liberal government as part of its massive re-organization of the company.

Other voices also called for the restoration of FOI for BC Ferries. A report released by the province's Comptroller General on November 6, 2009 revealed "a culture of secrecy and entitlement" at the provincially-owned but privately-run company. And one of the report's recommendations was to "Make BC Ferry Services and the BC Ferry Authority subject to the Freedom of Information and Protection of Privacy Act."

These calls were answered: the BC government announced that both BC Ferries

and the BC Ferry authority would be brought back under the FOIPP Act as of October 1, 2010.

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 filed a complaint about the policy with Information and Privacy Commissioner Elizabeth Denham on October 5, stating that we "...consider this policy to be a pre-emption of the rights of requesters and highly destructive to the purposes and proper functioning of the Act."

Other consultations and advocacy work

Bill C-32, *An Act to Amend the Copyright Act*

The Federal Government introduced Bill C-32 in response to heavy lobbying by industry groups. There are controversial privacy, fair use, and free expression issues involved.

Then-Policy Director Vincent Gogolek wrote a satirical op-ed piece on Bill C-32 that appeared in the Vancouver Sun, with the headline *Is Canada's heritage minister an agent of foreign influence?*⁴

FIPA will make formal submissions when Bill C-32 goes to committee. We have been consulting with our usual partners across Canada, including Prof. Michael Geist, Prof. Andrew Clement and the Canadian Internet Policy and Public Information Clinic (CIPPIC)

⁴ Available at http://www.fipa.bc.ca/library/Articles/Is_Heritage_Minister_Agent_of_foreign_influence-Jul_2_2010.doc

We endorsed the *Consensus Submission to the federal government consultation on a Digital Economy Strategy for Canada* and are participating in the Fair's Fair Coalition and Canada's Privacy Community Coalition.

Reform of the federal *Access to Information Act*

FIPA continues to partner with the Canadian Newspaper Association and the Canadian Taxpayers Federation to push for reform of the ATI Act. We discussed strategy during 2010 and asked for a meeting with the Opposition leader at year end, but took no further steps. The federal Conservatives seem completely unwilling to improve the ATI regime.

(In 2009 the House of Commons Standing Committee on Access to Information, Privacy and Ethics made recommendations for reform based on 12 urgent recommendations from then-Commissioner

Robert Marleau. FIPA made an appearance and submission that year.)

Other federal issues in play

FIPA has participated in consultations, appeared before Parliament, and made submissions on three other federal initiatives involving FOI and privacy:

- Bill C-46, the *Investigative Powers for the 21st Century (IP21C) Act*, and Bill C-47, the *Technical Assistance for Law Enforcement in the 21st Century Act* (initiatives to increase "lawful access" – i.e. increased surveillance of the Internet and wireless communications by law enforcement and security forces);
- The *Electronic Commerce Protection Act* out of the ministries of Industry and Canadian Heritage, and
- Consultations by the Trilateral Committee on Trans-border Data Flows.

LEGAL ADVOCACY/ LITIGATION

Matters before the Information and Privacy Commissioner

BC government loses again in attempt to keep big contracts secret

Government secrecy took another hit in June when an OIPC adjudicator shot down two different cases related to the huge Maximus contract with the Ministry of Health Services for the delivery of MSP and PharmaCare services.

The government argued that the release of certain terms of the contract and the information related to penalties paid under the contract would harm the economic interests of the province. FIPA and the BC Government Employees Union argued the terms should be released. The Adjudicator agreed, finding that the government and Maximus had not shown that there was a reasonable apprehension of harm to the economic interests of the province.

Request for investigation of false claims of "no records" by government

At FIPA's request, BC's Information and Privacy Commissioner began 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 available at http://fipa.bc.ca/library/Letters/FIPA_request_to_OI_PC_for_investigation-Sept_2_2010.PDF

Complaint re possible illegal destruction of Cabinet emails

On June 24, 2009, FIPA made a formal request to Information and Privacy Commissioner to investigate the destruction by the BC government of years of Cabinet emails in contravention of the *Document Disposal Act*. The emails were among documents the court ordered the government to produce as possible evidence in the Basi-Virk corruption case.

The Commissioner's response to our complaint was delayed because the matter was before the courts at the time.

In January 2011, we received a response. The Commissioner declined to conduct research on the particular matter raised in our letter of complaint, but has decided to "...explore the possibility of conducting research into the adequacy of government records management policies and practices generally in terms of their affect on government's ability to respond openly, accurately, completely and in a timely fashion to access requests."

Request for investigation into government interference with FOI request management by Crown corporations

FIPA sent a formal request to the Commissioner on May 26, for an investigation into a government order requiring Crown corporations to notify the provincial government in advance when any information is to be released in response to FOI requests. In the letter requesting the investigation, we stated "The requirement gives us a great deal of concern about the increased likelihood of delay and possibly direct political interference with FOI requests. At a time where delay and

interference in FOI are endemic problems, it is discouraging to say the least that the government of British Columbia has taken the unprecedented step of sending instructions to Crown Corporations which appear to institutionalize practices which have already been criticized by your office."

The Commissioner's office investigated regarding Crown Corporations' practices in regard to this matter and found that, in practice, there was no actual interference with the FOI process, but that if future evidence arose of such interference, they would consider re-opening the investigation.

Request for documents related to privatization of BC Ferries

FIPA requested records pertaining to government's decision to privatize the BC Ferries Corporation. The government refused to release records, for the most part on the basis that it would reveal the discussions of cabinet or its committees (s.12 of FIPPA). (This is the precise reason FIPA filed this FOI request: to challenge the government's interpretation of the "Cabinet Confidences' exception in the FOIPP Act.)

FIPA asked the Information and Privacy Commissioner to review the government's refusal of records.

This decision of an Adjudicator in the office of the Commissioner came down against FIPA's position for the release of documents related to the privatization of BC Ferries. <http://www.oipc.bc.ca/orders/2010/OrderF10-15.pdf>

The decision was based on current jurisprudence on cabinet confidences, which FIPA has been working to improve through legislative change, as well as targeted legal action. FIPA's arguments that the Core Service Review Task Force was not a committee of cabinet was not dealt with by the adjudicator due to her finding on the other issues.

This is one of several cases FIPA is currently involved in regarding overbroad claims of cabinet confidentiality.

Requests for documents pertaining to discussions on HST

FIPA submitted an FOI request for records related to meetings or discussions where the harmonization of the provincial sales tax might be discussed. The Office of the Premier responses that they had no such records, but a subsequent release through FOI to the media revealed that a document had been prepared for a First Minister's meeting. FIPA has complained, and we are awaiting the ruling from the OIPC.

Requests for documents pertaining to Enhanced Drivers Licences

FIPA has made a number of requests of Canadian and US government bodies and these are at various stages, including hearings before the Commissioner. The Office of the Premier was required to release its records by March 31 under terms of a Consent Order, and complied accordingly.

A spreadsheet of the different responses and documents received has been put together to allow future work comparing the quality of response by different government bodies.

PIPA case between a client and insurance company over credit checks

FIPA intervened in this hearing at the request of the OIPC. An unrepresented individual made a complaint to the OIPC against his insurance company under BC's *Protection of Personal Information Act* (PIPA) for alleged improper use of his personal credit information.

Arguments centred on the question of consent for the collection and permissible uses of personal information: the client gave consent for the collection and use of his information for a credit check, and the information was used subsequently for a different, unrelated purpose – to assess risk and therefore claims level.

We are awaiting the ruling from the OIPC, and may continue as intervenors if this case proceeds to the courts.

Matters before the courts

FIPA's first appearance before the 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 Information and Privacy Commissioner did not complete 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.

FIPA's pro bono counsel, Brent Olthuis and Tam Boyer of Hunter Litigation Chambers, appear before the SCC on February 16, 2011. We are extremely grateful for their generous service to FIPA and their support of FOI in Canada.

Following an unsuccessful appeal, Submissions to government consultations are now confirmed as 'policy advice'

An adjudicator with the Office of the Information and Privacy Commissioner (OIPC) made an order deciding that submissions made to a government consultation may be classified as "advice or recommendations" to a Minister and therefore kept secret from the public. FIPA challenged that decision in the BC Supreme Court, but the court has upheld the OIPC's ruling.

Justice J. Miriam Gropper refused to overturn the 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*.

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.

In a public statement, we commented, "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."

Applicability of FOI to corporations created by Simon Fraser University

This case is now on its way to BC Court of Appeal. FIPA has been an intervenor since the initial hearing before the Commissioner.

The BC Supreme Court made a ruling that we consider in serious error regarding SFU's bid to keep records relating to their subsidiary companies and organizations firmly under wraps. The Justice ruled that, in spite of the application of the FOI act to universities, the 'corporate veil' that applies to their wholly-owned subsidiaries cannot be

pierced without evidence of fraud or wrongdoing.

This overturned an adjudicator's ruling that the company, 100 percent owned and operated by SFU, had control over the subsidiary's records and therefore had to release them under the FOI act.

If the current decision stands, it will open a door for every public body in the province to hide information by creating a subsidiary and transferring records to it.

Cabinet confidences

This action concerns the breadth of the definition of Cabinet confidences and Cabinet committees. FIPA has been interested in this issue since 1996 when the *Aquasource* decision was handed down by the BCCA.

FIPA provided assistance to the requester, Stanley Tromp, during the OIPC hearing, and when the government petitioned for judicial review of the Commissioner's Orders F08-17 and 08-18, we found pro bono counsel for him. FIPA is still involved in this litigation as a consultant.

The case was heard in Victoria in June before Joyce, J, who has reserved his decision. Sean Hern of Farris Vaughn's Victoria office is pro bono counsel in this matter.

THE ORGANIZATION

Financial Report

FIPA ended 2010 with a surplus of \$7,698. This is a vast improvement over last year's

deficit of \$6,402. (See following pages for the financial statements.)



Exhibit A

To the Board of Directors

B.C. Freedom of Information and Privacy Association

REVIEW ENGAGEMENT REPORT

We have reviewed the balance sheet of B.C. Freedom of Information and Privacy Association as at December 31, 2010, and the statements of income, retained earnings and cash flows for the year then ended. Our review was made in accordance with Canadian Generally Accepted Standards for Review Engagements and accordingly consisted primarily of enquiry, analytical procedures and discussion related to information supplied to us by the company.

A review does not constitute an audit and consequently we do not express an audit opinion on these financial statements.

Based on our review, nothing has come to our attention that causes us to believe that these financial statements are not, in all material respects, in accordance with Canadian generally accepted accounting principles.


CHARTERED ACCOUNTANTS

Vancouver, B.C.

March 2, 2011

**B.C. FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION
STATEMENT OF FINANCIAL POSITION**

AS AT DECEMBER 31, 2010
(Unaudited)

<u>ASSETS</u>	<u>2010</u>	<u>2009</u>
CURRENT ASSETS		
Cash	\$ 16,428	\$ 16,990
Accounts receivable	22,920	16,062
Harmonized sales tax recoverable	-	2,986
	<u>39,348</u>	<u>36,038</u>
CAPITAL ASSETS - notes 2(c) and 3	<u>4,948</u>	<u>6,279</u>
TOTAL ASSETS	<u>\$ 44,296</u>	<u>\$ 42,317</u>
 <u>LIABILITIES</u>		
CURRENT LIABILITIES		
Accounts payable and accrued liabilities	\$ 3,001	\$ 9,100
Withholding taxes payable	1,774	1,947
Harmonized sales tax payable	553	-
TOTAL LIABILITIES	<u>5,328</u>	<u>11,047</u>
 <u>FUND BALANCES</u>		
NET ASSETS		
Invested in capital assets	4,948	6,279
Externally restricted	5,840	3,250
Internally restricted	28,180	21,741
TOTAL NET ASSETS	<u>38,968</u>	<u>31,270</u>
TOTAL LIABILITIES AND NET ASSETS	<u>\$ 44,296</u>	<u>\$ 42,317</u>

APPROVED BY THE TRUSTEE



Director



Director

The accompanying notes are an integral part of these financial statements.

B.C. FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION
STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2010
(Unaudited)

	<u>2010</u>	<u>2009</u>
REVENUES		
Law Foundation	\$ 105,000	\$ 120,503
B.C. Gaming Funds	50,000	50,000
Conference fees	8,279	-
Donations	17,975	23,275
Other income	3,062	14,335
	<u>184,316</u>	<u>208,113</u>
EXPENSES		
Accounting and legal	4,598	5,351
Advertising and promotion	1,097	871
Amortization	1,331	1,999
Auto	14	29
Bank charges and interest	480	471
Conference	11,290	3,906
Consulting fees	31,239	68,813
Office and general	4,206	7,251
Rent	12,369	10,442
Research	1,965	6,764
Telephone	2,634	1,975
Wages	102,569	102,481
Web and internet	2,826	4,162
	<u>176,618</u>	<u>214,515</u>
EXCESS OF REVENUES OVER EXPENSES	<u>\$ 7,698</u>	<u>\$ (6,402)</u>

The accompanying notes are an integral part of these financial statements.

B.C. FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION
STATEMENT OF CHANGES IN NET ASSETS
FOR THE YEAR ENDED DECEMBER 31, 2010
(Unaudited)

	<u>2010</u>		<u>2009</u>	
	Net Assets	Excess (Deficiency)	Interfund	Net Assets
	Beginning of Year	of Revenues Over Expenses	Transfers	End of Year
	\$	\$	\$	\$
INVESTED IN CAPITAL ASSETS - note 2	<u>6,279</u>	<u>(1,331)</u>	-	<u>4,948</u>
	\$	\$		\$
EXTERNALLY RESTRICTED FUNDS				
Conference - ID theft	(6,887)	-	6,887	-
Personal Privacy Project	(2,503)	-	2,503	(6,887)
PLEI - Portal	4,002	(4,000)	(2)	(2,503)
ID Theft Resource Centre	7,076	(6,677)	(399)	4,002
Completed Projects	574	-	(574)	7,076
E - Health Privacy Project	-	4,215	-	4,215
B.C. Gaming Funds	988	(347)	-	641
Law Foundation Public Legal Education	-	884	-	884
Alberta Law Foundation	-	100	-	100
	<u>3,250</u>	<u>(5,825)</u>	<u>8,415</u>	<u>5,840</u>
	\$	\$		\$
INTERNALLY RESTRICTED				
General and Administrative Fund	<u>21,741</u>	<u>14,854</u>	<u>(8,415)</u>	<u>28,180</u>
	\$	\$		\$
	<u>31,270</u>	<u>7,698</u>	-	<u>38,968</u>
	\$	\$		\$
				<u>6,279</u>
				\$
				<u>31,270</u>
				\$

The accompanying notes are an integral part of these financial statements.

DIRECTORS, ADVISORS, VOLUNTEERS AND STAFF

FIPA's work would not be possible without the support of a large number of volunteers. We would like to thank the following key people in this support team, as well as the many others who contributed during 2010.

BOARD OF DIRECTORS 2010-2011

- President:** Richard Rosenberg, Professor Emeritus, Dept. of Computer Science, University of British Columbia
- Vice President:** James Symons, President and CEO, Power Diagnostic Technologies Ltd.
- Treasurer:** Tom Crean, Owner/Manager, Kearney Funeral Home
- Gwen Barlee, Policy Director, Western Canada Wilderness Committee
Bruno Godin, Consultant
Carla Graebner, Librarian, W.A.C. Bennett Library, Simon Fraser University
Paul Holden, Software Engineer, Fortinet Technologies
Michael Markwick, Sessional Instructor, School of Communication, Simon Fraser University
Meera Nair, Sessional Instructor, School of Communication, Simon Fraser University

BOARD OF ADVISORS

- Colin Bennett Professor, Dept. of Political Science, University of Victoria
Terry Eastwood Professor Emeritus, Dept. of Library, Archival & Information Studies, UBC
Gerald Fahey Barrister & Solicitor, Epstein Wood
Philippa Lawson Barrister and Solicitor
Murray Rankin Barrister & Solicitor, Heenan Blaikie LLP
Tom Riley President, Riley information Services, Inc.
Valerie Steeves Adjunct Professor, Faculty of Law, University of Ottawa
Mark Wexler Professor, Faculty of Business Administration, Simon Fraser University

OTHER VOLUNTEERS

We extend our special thanks to lawyers Tam Boyar, Dan Burnett, Sean Hern, Christine Joseph, Sara Levine and Brent Olthuis for their invaluable contributions to our work in 2010.

STAFF AND ASSOCIATES

- Vincent Gogolek, Executive Director
Darrell Evans, Program Director
Els Mol, Administrator
Stanley Tromp, Research Associate

BC Freedom of Information and Privacy Association
103 - 1093 West Broadway, Vancouver, BC V6H 1E2
Ph: 604-739-9788 • Email: fipa@vcn.bc.ca • Web: www.fipa.bc.ca

DEFINITIONS AND PRINCIPLES

Freedom of Information ("FOI")

In the broadest sense, freedom of information is the public's right to a free flow of information in society. This includes our rights to freedom of expression and access to information without undue restrictions imposed by government, corporations or other entities.

In the narrower sense in which we use it here, FOI is another term for the right of access to government information. We use these terms interchangeably.

Privacy and Privacy Protection

Privacy, as we define it, is the ability or right to have a "private life" - to be left alone, free from illegal or unwanted scrutiny and intrusions.

Privacy rights include informational privacy - the right to control or limit the collection, use and disclosure of one's own personal information by other agencies, whether they are part of government or the private sector.

Since knowledge brings power to those who possess it, knowledge of our private lives tends to increase the power and influence that governments and corporations have over us. Some limits must be imposed in order to maintain the delicate balance of power that sustains our democracy.

"Privacy protection" means defense of the privacy of individuals by legislation or other means.

Information Rights

People often ask why FIPA seeks to advance two human rights that may seem to be contradictory. The answer is, because FIPA's main goal is to empower individuals by helping to increase both their access to and their control of information. Both FOI and privacy rights increase the power of the individual in society, which is why we refer to both of them as "information rights".

Information rights provide individuals with a much-needed counterbalance to the far greater access to and control of information enjoyed by governments and other powerful organizations. Information rights improve our democracy by reducing this imbalance of power in a society that is increasingly dominated by the uses and abuses of information.

Further, our right as individuals to know what is going on in society must exist in balance with the right to individual privacy.

Together, information rights help to create:

- an informed electorate,
- open, honest and accountable government,
- greater citizen participation in the democratic process, and
- greater protection of individual human rights.