



BC FREEDOM OF  
INFORMATION  
AND PRIVACY  
ASSOCIATION

**Annual Report  
for  
2011**

April 18, 2012

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

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**E**ven 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 how and where information flows.

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.<sup>1</sup>

The increasing push for information rights is driven by three powerful trends:

- First, by growing public expectations of fairness, transparency, and participation in public decision-making.
- Second, by the need to constantly adjust the balance of power between governments and the public in modern democracies.
- Third, by the radical transformation the world is undergoing due to information technology.

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.

FIPA is widely known 21 years later, 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 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 21 years, we have:

- issued more than 60 studies, reports and other publications on information rights issues, including two soft cover books, and
- produced 180 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.

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

# HIGHLIGHTS – 2011 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.

## PEOPLE SERVED, 2008 – 2011

	2008	2009	2010	2011
Helpline / casework	438	399	462	510
Legal assistance	13	16	42	30
Website visits <sup>2</sup>	100,878	102,576	107,439	102,773
Hits on website “Help topics”	11,390	12,066	13,145	20,965
Media interviews	88	108	118	117
Public events (number of attendees)	168	616	255	210
Speaking engagements	653	490	319	544
National Privacy Coalition Listserv	142	142	145	163
FIPA followers (members, subscribers, etc,	304	481	522	650
<b>Total people served</b>	<b>114,074</b>	<b>116,894</b>	<b>122,447</b>	<b>125,962</b>

## PUBLIC SERVICES

### Public assistance/ legal aid

**Helplines:** During 2011, FIPA provided personal assistance to approximately 510 people through our telephone and Internet help lines, a slight increase over 2010.

**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 2011, a total of 20,965 people visited these topics, an increase of about 59% over 2010.

**Legal Assistance:** FIPA provided legal information or assistance to 30 people during 2011. 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.

<sup>2</sup> Tabulation of website activity has been improved, resulting in adjustments to past figures.

## PUBLIC EDUCATION

### Educational Events

#### [FIPA Annual General Meeting](#)

April 6, 201, YWCA Hotel, 733 Beatty Street



**Guest speaker Micheal Vonn, Policy Director, BC Civil Liberties Association**

**“It’s not a Conspiracy, it’s a Business Plan!”**

Micheal Vonn spoke about the BC government’s new vision and service plan called “Citizens @ the Center: Government 2.0” This plan will require a massive expansion of the amount of personal information the provincial government collects, shares internally and discloses to the growing number of public and private sector ‘partners’ involved with government programs. About 21 people attended.

#### [Forum to Stop Online Spying](#)

Wednesday July 27th, 1:30-5:30 pm  
Morris J. Wosk Centre for Dialogue

This event focused on the Canadian government’s impending ‘lawful access’

legislation permitting expanded police surveillance of digital communications.

Michael Markwick, an SFU lecturer and FIPA board member, produced this event with help from FIPA, OpenMedia.ca and BCCLA. FIPA executive director Vincent Gogolek was a speaker. About 50 people attended.

#### [FOI Workshop](#)

**Strategic Use of Freedom of Information laws for Journalists, Researchers and Public Interest Advocates**

September 29, People’s Law School

The workshop featured these panelists:

- Curt Petrovich, National Reporter, CBC
- Gwen Barlee, Policy Director, Wilderness Committee
- Vincent Gogolek, Executive Director, FIPA

About 40 people attended.

#### **FIPA Website**

FIPA’s website visits took a slight dip during 2011 to a total of 102,773 unique visitors. However, the number of hits rose significantly, to 812,867.

#### **HELP pages**

Visits to Website Help Topics			
2008	2009	2010	2011
11,390	12,066	13,145	20,965

FIPA’s FOI and privacy HELP pages (<http://www.fipa.bc.ca/help/>) provide people with detailed information and tools for making FOI requests, privacy complaints, and requests for access to their own personal information in the custody of both public and private sector organizations. We consider this resource to be the best of its kind on the World Wide Web.

## News conferences, news releases and media interviews



FIPA staged a media event in December in the form of a 7<sup>th</sup> birthday party for our longest-running FOI request – for the BC government’s complete \$300 million Workplace Services contract with IBM.

- FIPA representatives gave about 117 media interviews in 2011.
- We issued 17 news releases which can be viewed [here](#).

- FIPA’s Executive Director wrote/co-wrote 3 published articles.
- Articles and sample media coverage may be viewed [here](#).

## Speeches and presentations

FIPA representatives addressed approximately 544 people during 2011

## FIPA Bulletin and electronic news services

In 2011, we sent out three member bulletins (Available [here](#)) and 35 news alerts from our email news service (364 subscribers). FIPA also started a Twitter feed, which has acquired about 200 followers to date.

FIPA co-hosts the National Privacy Coalition Listserv, a network of leading privacy officials, scholars, professionals and activists in Canada. The listserv has about 160 members, including most of Canada’s information and privacy commissioners.

## REPORTS AND SUBMISSIONS

### ***Proactive and reactive disclosure of government-held information in BC***

FIPA made a submission in March to the Information and Privacy Commissioner’s investigation of BC Government practices regarding ‘proactive disclosure’ of information.

The investigation was prompted by a FIPA complaint about BC Ferries’ controversial policy of posting records obtained through FOI requests on their website at the same time as they release them to the FOI requester. In our opinion, this policy is designed to discourage FOI requesters because it deprives them of first use of the documents they worked hard to obtain and for which they may have special uses.

FIPA’s submission criticizes BC Ferries’ disclosure policy because the result would be fewer FOI requests and less transparency. We point to several sections of the *Freedom*

*of Information and Protection of Privacy Act* which show how public bodies can be proactive in releasing material while still upholding their duty to assist requesters. The Submission is available [here](#).

### ***“Open Government” – Submission to the House of Commons Standing Committee on Access to Information, Privacy and Ethics***

ED Vincent Gogolek appeared before this committee in February to present FIPA’s submission on initiatives to increase public access to federal government data.

We caution that ‘Open Data’ initiatives do not necessarily equal more open or more transparent government, and any such initiatives must not sideline much-needed reform of the federal *Access to Information Act*.

The Submission is available [here](#).

**Submission to Vancouver Police Board re: VPD non-compliance with Information and Privacy Commissioner recommendation on FOI procedure**

Vincent Gogolek [appeared](#) before the Vancouver Police Board on July 19 to present a [submission](#) regarding the VPD’s practice of posting documents released to FOI requesters on the VPD website at the same time as they are released to requesters.

This practice continues despite a finding by the Information and Privacy Commissioner that such practices violated the fundamental purpose of the *Freedom of Information and Protection of Privacy Act*. It also contradicts a resolution of the Vancouver City Council committing the City to “...not engaging in the simultaneous disclosure of materials resulting from a Freedom of Information request.”

As a result of the hearing, the Police Board reviewed the offending practice but decided to continue it, in defiance of the Commissioner’s recommendation. FIPA may file a complaint to the Commissioner in 2012.

**Submission to Information and Privacy Commissioner re: ICBC Disclosures of Facial Recognition Data to Police**

FIPA and BCCLA sent a joint submission on July 4<sup>th</sup> to the Information and Privacy Commissioner, who is auditing ICBC’s proposed use of its photo database for the purposes of identifying suspects in the June 2011 Stanley Cup riots.

Our associations are deeply concerned about the privacy policy implications of allowing ready police access to the facial recognition-enabled database held by ICBC.

The submission is available [here](#).

**LEGAL AND POLICY RESEARCH**

FIPA has a number of research projects in progress, including 9 FOI requests with government agencies for research purposes. FOI requests 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 2011:

Complaint or issue	Action taken / result
<p><b>Amendments to the Freedom of Information and Protection of Privacy Act:</b> Amendments were brought in during the fall 2011 legislative session, primarily affecting privacy rights. They pave the way for ‘Government 2.0’, Integrated Case Management and the planned Secure CareCard (See next two items).</p>	<p>FIPA conducted research into these changes, and has provided op-eds and other materials to the media and others as background information. Further action will be taken during 2012 as these changes are implemented in policy and regulations.</p>
<p><b>BC’s “Government 2.0 – Citizens @ the Centre” transformation plan</b></p>	<p>Extensive research was done by staff and volunteers, using FIPA’s national contacts and provincial FOI requests.</p>
<p><b>The new Secure CareCard:</b> Starting in 2012, the BC government will introduce a ‘secure CareCard’ as proof of identity and registration in the Medical Services Plan. People will be able to use the new card, or have their MSP account linked to their driver’s license.</p>	<p>We continued gathering background information about the plan in order to understand its data-sharing and privacy implications.</p>

<p><b>Access to Information under the BC Liberal Government, 2001-2011</b></p>	<p>FIPA commissioned research in order to produce 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><b>The Public Interest Override in BC's <i>Freedom of Information and Protection of Privacy Act</i></b></p>	<p>At FIPA's request, the Environmental Law Clinic at the University of Victoria did legal research and analysis of the (much abused and neglected) public interest override in FOIPPA. This legal opinion, which included a review of legislation in other jurisdictions, will be used in future law reform work .</p>
<p><b>Increase in the number of claims that there are 'no responsive records' to FOI requests</b></p>	<p>FIPA has commissioned research to fully explore what appears to be a remarkable increase in the number of responses to FOI requests that there are no responsive records. We expect this research to be completed early in 2012.</p>
<p><b>Bill 11 and government collection and sharing of personal health information:</b></p> <p>This bill amended three pieces of health care legislation, giving the government extraordinary powers to requisition personal health information, bypassing the restraints intended by the <i>e-Health Act</i>.</p>	<p>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><b>PIPEDA statutory Review:</b></p> <p>This was scheduled to take place in fall of 2011 but has been delayed.</p>	<p>FIPA prepared an analysis of past recommendations by FIPA, the federal Privacy Commissioner and what amendments have been made to date. We will use this to write our submissions when the review finally begins in the Commons ETHI committee.</p>
<p><b>FOI staffing:</b></p> <p>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>

## LAW REFORM

### BC's Open Information and Open Data Policy

FIPA takes some of the credit for Premier Christy Clark's announcement in July of the BC government's new Open Government – Open Data Policy. The policy includes a

new, 'citizen-focused' government website, release of open datasets and so-called 'proactive' posting of freedom of information requests and certain government expenses. Needless to say, FIPA has been BC's most forceful advocate for better public access to information for 20 years.

“I have issued a direction to all government ministries to make all data and information that does not compromise privacy available to all citizens on an ongoing basis,” the Premier stated in a [column](#) distributed to BC newspapers.

Three new websites include:

- [Gov.bc.ca](#), a redesigned central portal for the provincial government,
- [Data BC](#), a new ‘open data’ platform where some of the government’s many databases are accessible, and
- [Open Information](#), a site where one can find records released through freedom of information requests and other documents of interest to the public.

The Open Information website includes improved information about making FOI requests and this section is more user-friendly than the previous website.

FIPA’s news release responding to the Premier’s announcement is [here](#).

FIPA will monitor the government’s fulfillment of the Open Information commitments closely and do all we can to ensure it is sincere and effective. At the same time, we will emphasize that posting databases and records previously released in response to FOI requests does nothing to remedy BC’s badly broken FOI request process.

## **Government 2.0 – Citizens @ the Centre**

‘Government 2.0–Citizens@ the Centre’ is the Dark Side of the BC government’s Open Government vision. It is a sweeping plan to transform government communications, management and service delivery through information technology, and encompasses the Open Information–Open Data policy above.

This transformation is led by the province’s Chief Information Officer (CIO) and empowered by a mandate originally laid out by the Premier’s Technology Council in

2002. It includes a radical vision of privacy protection – namely, that such protections are obsolete in our new networked society, and in fact are a barrier to the modernization of government and the effective and efficient delivery of public services.

The reformation intended is radical and, unless countered, will deal a serious blow to the privacy rights that have been developed (and fought for by FIPA) over the last 20 years.

Electronic Health Records (EHRs), Integrated Case Management (ICM) and the planned new Secure Care Card – these are all parts of a vision that sees all the walls broken down between discrete databases of personal information held by government ministries, the health care and education systems, law enforcement bodies, other levels of government, and private sector partners that participate in the delivery of government services,

In the Government’s 2.0 world, government officials would likely have access to comprehensive, birth-to-death dossiers of personal information and citizens would retain very little privacy from the prying eyes of their government.

- During 2011, we worked continuously with fellow rights advocates and with the stakeholder groups most affected by these issues, researching Government 2.0 and its effects, spreading the word through speeches and the media, and in general doing our best to raise awareness and preserve privacy protection for all citizens.
- With the public launch of FIPA’s [Health Information Privacy in BC](#) website, and the updating of our site on [Integrated Case Management](#) (both funded by the Law Foundation), FIPA now has active public information campaigns underway on two leading programs of Government 2.0. We are researching the third (Secure CareCard).

- **Amendments to the *Freedom of Information and Protection of Privacy Act*:**

Amendments to FOIPPA were brought in during the fall 2011 legislative session, primarily affecting privacy rights. They pave the way for 'Government 2.0', Integrated Case Management and the planned Secure CareCard.

FIPA has conducted research into the legislative changes and each of these issues. We have provided op-eds and other materials to the media and others as background information. Further action will be taken during 2012 as these changes are implemented in policy and regulation.

Here are links to FIPA's [news release](#) and [Op-ed](#) on the amendment bill.

## **The push for Freedom of Information reform in British Columbia**

FIPA has often criticized the BC Government's culture of resistance toward the FOIPP Act over the last 10 years, and we referred above to BC's badly broken FOI request process. Unfortunately, the situation did not improve during 2011, and there was little opportunity to bring a positive FOI reform message forward.

FIPA's push for an update of the FOIPP Act, and for reform of the obstructive way the BC Government administers it, consisted mainly in taking public bodies to task for their poor performance last year. We held their feet to the fire in the following ways:

### **Preventing BC Ferries' anti-FOI policies from being extended across the BC Public Sector**

FIPA played a major role in preventing the BC government from adopting an FOI disclosure process that was adopted by the BC Ferries Corporation in order to discourage FOI requests, especially

those from public interest groups and the media.

BC Ferries' policy has been to post any records released to an FOI requester immediately on the BC Ferries website – sometimes even before the requester receives them. The result is that requesters are deprived of first use of the information they worked to obtain, which lessens the benefits, motivation and rationale for making FOI requests.

### **The problem spreads**

Early this year, a spokesperson for BC's Ministry of Citizens' Services, which processes all provincial government FOI requests, announced that a BC Ferries-style policy would be extended across the entire government.

FIPA filed a complaint about BC Ferries' policy with Information and Privacy Commissioner Elizabeth Denham in October 2010, 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." FIPA does favour the eventual public posting of such records, but only after the original requester has first use for a reasonable period of time.

In response to FIPA's complaint, the Commissioner launched an inquiry into so-called "Proactive Disclosure Policies" (in this case a misnomer) and whether or not BC Ferries' practice violates the FOIPP Act.

### **FIPA Action on this issue**

- In addition to making a formal complaint to the Commissioner about BC Ferries' anti-FOI policy, FIPA's executives met face-to-face with both the Commissioner and BC's new Minister of Labour, Citizens' Services and Open Government to discuss this and other key issues.
- As our contribution to the Commissioner's inquiry, we made a written submission criticizing the disclosure policy used by BC Ferries

and recommending how public bodies can be truly proactive in releasing records while upholding their duty to assist requesters. View FIPA's submission [here](#).

- We did a great deal of advocacy work on the issue with the media and other stakeholders for the six months prior to the release of the Information and Privacy Commissioner's report on May 16, 2011.

The Commissioner's report, [Investigation into the Simultaneous Disclosure Practice of BC Ferries](#), recommended against the BC Government adopting the BC Ferries policy, and suggested they institute a minimum 24 hour delay after the FOI requester receives the requested documents before posting them for the broad public.

**Result:** Following the release of the Commissioner's report, the BC Government announced that it would amend its policy and give requesters a minimum of 72 hours and maximum of five days with the records before their public release.

**Update:** Preliminary research seems to indicate that the BC Government is not following its own guidelines. Apparently the 72-hour delay is being respected, but only a small and arbitrary selection of FOI'd records is being posted. We have commissioned a researcher to investigate further.

### **Public disclosure of government contracts**

We continued our seven year battle for routine public disclosure of all the BC government's contracts with its corporate partners. This battle has featured FOI requests for contracts, reviews before the Information and Privacy Commissioner, appeals to the courts, media publicity, and direct contact with government officials and ministers.

The 'main feature' of this saga is our ongoing struggle to get a complete copy of the BC government's \$300 million with IBM for Workplace Support Services. We have won favorable decisions twice from the office of the Information and Privacy Commissioner (OIPC) and once before the BC Supreme Court. Now the government has gone to the BC Supreme Court for a second time to argue that the Order from the Commissioner's office is unreasonable and should be thrown out.

In December, we highlighted the issue with a 7<sup>th</sup> birthday party for the IBM contract FOI request. Joining us were speakers from the Canadian Taxpayers Federation and the BC Civil Liberties Association. (See news [here](#).)

FIPA is not alone in advocating for the salutary effect of transparency in contracting. The Information and Privacy Commissioner stated the following in her last annual report:

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.

[\[http://www.oipc.bc.ca/news/2010Releases/NR-CompassFIPAorders.pdf\]](http://www.oipc.bc.ca/news/2010Releases/NR-CompassFIPAorders.pdf)

- We also have an appeal before the Commissioner about the exception BC Hydro invoked to withhold parts of its master service agreement with the Accenture corporation.
- FIPA sent a letter to BC's new Minister of Labour, Citizens' Services and Open Government in March, asking her to demonstrate the government's commitment to Open Government by routinely posting contracts online. (See the letter and news release [here](#).)

- We met with the Minister in May to discuss the issue. To date, we are still awaiting word that the government will institute the release of all future contracts as part of the new '[Open Government – Open Data](#)' policy.

### **Lobbying for FOI coverage of public bodies' wholly-owned corporate subsidiaries**

Following a series of scandals and failures, as well as pressure from FIPA, the BC government announced in 2006 that they would be putting for-profit subsidiaries of school districts under the FOI act.

This October, following an adverse ruling by the Information Commissioner on an FOI request for records of a wholly-owned subsidiary of UBC, we took the government to task for its failure to fulfill that promise – and, as we have for years, demanded that they go beyond it by extending FOI coverage to the wholly-owned subsidiary corporations of *all* public bodies. (See FIPA news item [here](#).)

We have not been alone in advocating this position. We pointed out in a [news release](#) that, “Even though the government is currently pushing amendments to the *Freedom of Information and Protection of Privacy Act* (FOIPPA) through the Legislature, they are deliberately ignoring a recommendation to bring these subsidiaries under FOIPPA made by the Special Committee that reviewed the Act in 2010.”

The Information and Privacy Commissioner also joined the call to extend coverage in a letter to Margaret McDiarmid, the Minister of Open Government. Following that, the minister stated in the Legislature that the government will be working with the Information and Privacy Commissioner to address the gap. We are awaiting that development.

## **The Stop Online Spying Campaign**

During 2011, FIPA worked with a variety of partners – primarily OpenMedia.ca, BC Civil Liberties and the Canadian Internet Policy and Public Interest Clinic – to create a national ‘Stop Online Spying’ campaign. The campaign’s objective is to get the federal government to back off from the more extreme provisions of so-called “Lawful Access” legislation that has been put forward in various forms for more than a decade.

The lawful access bill, previously introduced under many titles, including the *Investigative Powers for the 21<sup>st</sup> Century Act*, has lately been reintroduced by the conservatives as the *Protecting Children from Internet Predators Act*. It will sharply increase the power and ability of law enforcement and security agencies to conduct warrantless surveillance of the Internet and wireless communications of Canadians.

FIPA has done extensive work on this file over the years, including legal analysis and submissions, Parliamentary appearances, two day-long public consultation sessions, and much public campaigning.

Following the initial work, OpenMedia.ca’s website became the main media platform for the Stop Online Spying campaign, while policy discussion, legal analysis and strategic planning occur on a dedicated Listserv.

The SOS campaign includes an informal coalition, a website featuring an online petition with 80,000 signatures to date, a widely-endorsed letter to the Prime Minister, and a number of [public events](#) including the [Forum to Stop Online Spying](#) mentioned above.

See the news release [here](#) and details of the campaign [here](#) and [here](#).

## **Reform of the federal Access to Information Act**

Things have never been so bad for access to government information in Canada. The current Federal government has no appetite to reform the Access to Information Act, in

spite of the law's serious inadequacies. To the contrary, the Conservatives have earned the reputation as the most controlling Canadian government in history when it comes to access to information in all its forms.

For the last few years, FIPA has partnered with the Canadian Newspaper Association (now called Newspapers Canada) and the Canadian Taxpayers Federation to push for reform of the ATI Act. Here are the actions we took during 2011:

- **February:** FIPA's Vincent Gogolek appeared before a Parliamentary committee to caution against 'Open Government' models that actually limit citizens' information rights. [More here.](#)
- **April 6:** During the federal election the partnership sent a [questionnaire](#) to the party leaders on what they would do to fix the ATI system. Results were posted on our websites for voters' information.
- **August 9:** FIPA criticized the RCMP decision to drop an investigation into a serious violation of the *Access to Information Act*. [More here.](#)
- **August 30:** Our partnership urged a Commons inquiry into the RCMP's dropping of the investigation into the violation of the ATI Act. The government majority on the Committee ensured that there was no scrutiny of this problem, despite the fact that the Information Commissioner herself called it a "black hole". [More here.](#)
- **September:** The controversy over FOI interference blew up in Parliament; The Info Commissioner confirmed the 'black hole' in ministers' offices [More here.](#)
- **October:** The former ministerial assistant whose actions in blocking an ATI request resulted in the RCMP investigation (at the Information Commissioner and Minister's request) threatened to sue FIPA and our partners for defamation in Ontario. Because the threat had no legal basis, no apology was given, nor was any material retracted or removed from any of the three groups' websites. No legal action ensued.
- **October 12:** We blew the whistle on the Canadian Government's misrepresentation of its performance on open government to the U.S. State Department [More here.](#)
- **December:** FIPA took part in a hastily arranged Twitter town hall on Open Government put on by Treasury Board.

## LEGAL ADVOCACY/ LITIGATION

### Matters before the Information and Privacy Commissioner

#### BC government keeps losing in fight to keep big contracts secret

FIPA has won a number of battles before the OIPC regarding the public release of large government outsourcing contracts. In Order F11-14, the OIPC ordered the release of most of the Master Services Agreement with HP Advanced Solutions.

HP and the government had argued that large parts of the contract should be kept secret because of alleged dangers to the security of the system, the economic

interests of the province and HP's commercial interests. Only a few pages related to passwords and other direct security aspects were not subject to the order to release the contract.

#### **Commissioner's order:**

<http://www.oipc.bc.ca/orders/2011/OrderF11-14.pdf>

#### BC Hydro also fighting to keep outsourcing contract secret

FIPA has also filed a request for the Accenture contract with BC Hydro to run its call centre for customer service. BC Hydro invoked a number of the same exceptions used by the BC government, including alleged dangers to the security of the

system, the economic interests of BC Hydro and Accenture's commercial interests. FIPA complained, and a hearing is expected to take place sometime in 2012.

### **Calls to bring BC Ferries back under the FOI Act succeed, but new problems arise**

The BC government brought both BC Ferries and the BC Ferry authority 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 deliberately set up an FOI management system designed to discourage FOI requests, especially those from public interest groups and the media.

The policy stated that any records released to requesters would immediately be posted on the BC Ferries website. The result would 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 the OIPC, 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."

The Commissioner conducted a review of the practice generally, not just at BC Ferries, and extended the review period in order to accept a number of submissions from other parties.

The OIPC ruling found that the BC Ferries system 'frustrates the purposes of the *Freedom of Information and Protection of Privacy Act*', but rejected FIPA's contention that it amounted to a breach of the duty to assist requesters under the Act. This was based inexplicably on finding there is ***no individual right of access to information***, something that has been expressly contradicted by the BC Court of Appeal and the Supreme Court of Canada in subsequent decisions.

FIPA is looking for an opportunity to raise these issues once again with the OIPC.

### **Request for investigation of government claims of "no records"**

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 an 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 [here](#).

### **Requests for documents pertaining to micro-chipped Care Cards and Drivers Licences**

FIPA requested information about BC's proposed micro-chipped Care Cards and drivers licences in May 2011. We received several hundred heavily redacted pages from ICBC after they signed a Consent Order to provide them. Ministry of Health Services refused to sign such an order, after running through all its time extensions under the Act. The ministry then made a categorical denial of access to all documents two days before a hearing into their deemed refusal to respond to FIPA's FOI request. Complaints have been filed with the OIPC about both requests. Hearings have yet to be scheduled.

## **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 premiums.

The OIPC ordered that although the collection of this data may be reasonable, it still required the insurance company to get the consent of its customers.

The insurance company has filed for judicial review of the decision and FIPA has standing as an intervenor in the case, which is to be heard in June 2012. Joseph McArthur and Anthony Purgas of Blake Cassells and Graydon's Vancouver office are acting pro bono for FIPA.

## **Matters before the courts**

### **FIPA's first appearance before the Supreme Court of Canada**

For the first time ever, FIPA was granted leave to intervene in a case in the Supreme Court of Canada. The case came out of Alberta, but has 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.

The Supreme Court agreed, sending the matter back to the chambers judge with instructions on how to interpret the law. The case will also have major importance, as it makes challenges of tribunal decisions on jurisdictional grounds much more difficult.

FIPA was represented by pro bono counsel Brent Olthuis and Tam Boyer of Hunter Litigation Chambers.

### **BC Government appeals order to release IBM contract – again**

FIPA's victory in securing an Order from the OIPC to release the IBM Workplace Services Contract came under attack in January when the provincial government sought judicial review of the decision on the basis that it was unreasonable and would compromise the security of government computer systems.

As noted above, FIPA won a comprehensive victory when the OIPC rejected the government's claims to exceptions to release related to security of computer systems, the economic interest of BC and third party confidentiality. Government has stopped claiming the last two and is now relying on s.15 to block release.

The hearing is set for BC Supreme Court in Victoria in March 2012, with Sean Hern of Farris Vaughn as FIPA's pro bono counsel.

### **Applicability of FOI to corporations created by Universities**

A case involving FOI coverage of a corporation created by SFU was dismissed as moot by the BC Court of Appeal after the requester died. FIPA had been an intervenor since the initial hearing before the Commissioner.

This means that a BC Supreme Court ruling that we consider to be in serious error is the law and binds the Commissioner. 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.

The Commissioner was forced to rule that UBC did not have custody or control of its similar subsidiary companies. No judicial review petition has been filed as yet, and the Minister of Citizens Services has said in the Legislature that she will examine making an amendment to the law (see law reform section above for details).

FIPA was represented pro bono in both the SFU and UBC cases by Dan Burnett of Owen Bird.

### **Cabinet confidences**

This is a judicial review by petition of the BC Government of OIPC orders regarding the breadth of the definition of Cabinet

confidences and Cabinet committees. The government's petition was rejected almost entirely in a January 2011 decision.

FIPA was involved in this litigation as a consultant. We have been interested in this issue since 1996 when the Aquasource decision was handed down by the BC Court of Appeal, and we provided assistance to the requester, Stanley Tromp, during the OIPC hearing.

When the government petitioned for judicial review of the Commissioner's Orders F08-17 and 08-18, FIPA obtained Sean Hern of Farris Vaughn's Victoria office to act as pro bono counsel for Tromp.

## **THE ORGANIZATION**

### **Financial Report**

FIPA ended 2011 with a deficit of \$8,302.

The Board and staff are evaluating improvements to fundraising programs that must be made in 2012 to ensure we move back into surplus territory.

### **Staff Changes**

As of January 2011, Vincent Gogolek became Executive Director and Darrell Evans moved into the interim position of Program Director. At the end of the year, ads were placed and the search began for a replacement Program Director who will also be responsible for fundraising and membership development.



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, 2011, 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 ACCOUNTANT


Vancouver, B.C.  
February 13, 2012

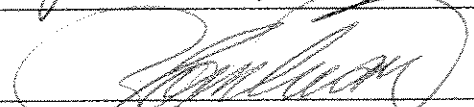
**B.C. FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION**  
**STATEMENT OF FINANCIAL POSITION**

**AS AT DECEMBER 31, 2011**  
(Unaudited)

<u>ASSETS</u>	<u>2011</u>	<u>2010</u>
<b>CURRENT ASSETS</b>		
Cash	\$ 26,355	\$ 16,428
Accounts receivable	5,330	22,920
Harmonized sales tax recoverable	<u>187</u>	<u>-</u>
	31,872	39,348
<b>CAPITAL ASSETS - notes 2(c) and 3</b>	<u>3,906</u>	<u>4,948</u>
<b>TOTAL ASSETS</b>	<u>\$ 35,778</u>	<u>\$ 44,296</u>
 <u>LIABILITIES</u>  		
<b>CURRENT LIABILITIES</b>		
Accounts payable and accrued liabilities	\$ 3,260	\$ 3,000
Withholding taxes payable	1,852	1,775
Harmonized sales tax payable	<u>-</u>	<u>553</u>
<b>TOTAL LIABILITIES</b>	<u>5,112</u>	<u>5,328</u>
 <u>FUND BALANCES</u>  		
<b>NET ASSETS</b>		
Invested in capital assets	3,906	4,948
Externally restricted	996	5,840
Internally restricted	<u>25,764</u>	<u>28,180</u>
<b>TOTAL NET ASSETS</b>	<u>30,666</u>	<u>38,968</u>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<u>\$ 35,778</u>	<u>\$ 44,296</u>

**APPROVED BY THE DIRECTORS**

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director

*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, 2011**  
(Unaudited)

	<u>2011</u>		<u>2010</u>	
	Net Assets	Excess (Deficiency)	Interfund	Net Assets
	Beginning of Year	of Revenues	Transfers	End of Year
	Over Expenses	Transfers	End of Year	End of Year
	\$	\$	\$	\$
<b>INVESTED IN CAPITAL ASSETS - note 2</b>	4,948	(1,042)	-	3,906
	<u>5,840</u>	<u>1,275</u>	<u>(6,119)</u>	<u>996</u>
	28,180	(8,535)	6,119	25,764
	<u>\$ 38,968</u>	<u>\$ (8,302)</u>	<u>\$ -</u>	<u>\$ 30,666</u>
				<u>\$ 38,968</u>
<b>EXTERNALLY RESTRICTED FUNDS</b>				
FIPA Anniversary Fund Raiser	-	4,030	(4,030)	-
ID Theft Resource Centre	-	531	(531)	-
E - Health Privacy Project	4,215	(2,757)	(1,458)	4,215
B.C. Gaming Funds	641	(535)	-	106
Law Foundation Public Legal Education	884	6	-	890
Alberta Law Foundation	100	-	(100)	-
	<u>5,840</u>	<u>1,275</u>	<u>(6,119)</u>	<u>996</u>
	28,180	(8,535)	6,119	25,764
	<u>\$ 38,968</u>	<u>\$ (8,302)</u>	<u>\$ -</u>	<u>\$ 30,666</u>
				<u>\$ 38,968</u>
<b>INTERNALLY RESTRICTED</b>				
General and Administrative Fund				

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, 2011**  
(Unaudited)

	<u>2011</u>	<u>2010</u>
<b>REVENUES</b>		
Law Foundation	\$ 73,531	\$ 105,000
B.C. Gaming Funds	50,000	50,000
Conference fees	5,969	8,279
Donations	4,583	17,975
Other income	2,627	3,062
	<u>136,710</u>	<u>184,316</u>
<b>EXPENSES</b>		
Accounting and legal	5,742	4,598
Advertising and promotion	828	1,097
Amortization	1,042	1,331
Auto	11	14
Bank charges and interest	1,196	480
Communications	5,165	4,522
Conference	704	11,290
Consulting fees	4,073	31,239
Fund raising	5,584	-
Office and general	1,848	3,840
Rent	12,768	12,369
Research	2,066	1,965
Telephone	1,251	1,304
Wages	102,734	102,569
	<u>145,012</u>	<u>176,618</u>
<b>EXCESS OF REVENUES OVER EXPENSES</b>	<u>\$ (8,302)</u>	<u>\$ 7,698</u>

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

# DIRECTORS, ADVISORS, VOLUNTEERS AND STAFF

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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 2011.

## BOARD OF DIRECTORS 2011-2012

<b>President:</b>	Richard Rosenberg, Professor Emeritus, Dept. of Computer Science, University of British Columbia
<b>Vice President:</b>	Carla Graebner, Librarian, W.A.C. Bennett Library, Simon Fraser University
<b>Treasurer:</b>	Tom Crean, Owner/Manager, Kearney Funeral Home Gwen Barlee, Policy Director, Western Canada Wilderness Committee Bruno Godin, Consultant Michael Markwick, PhD, Instructor and Convenor, Communication Division, Capilano University Meera Nair, PhD, Lecturer, Beedie School of Business, Simon Fraser University Mark Weiler, PhD, Research Associate, Faculty of Education, Simon Fraser University James Symons, President and CEO, Power Diagnostic Technologies Ltd.

## 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

Special thanks to lawyers Tam Boyar, Dan Burnett, Sean Hern, Sara Levine, Joseph McArthur, Brent Olthuis, and Anthony Purgas for their invaluable contributions to our work in 2011.

## STAFF AND ASSOCIATES

Vincent Gogolek, Executive Director	Els Mol, Administrator
Darrell Evans, Program Director	

# DEFINITIONS AND PRINCIPLES

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## 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.