

Special committee report recommends changes to B.C.'s FIPPA legislation

In June 2022, a special committee appointed by the Legislative Assembly published a report recommending significant amendments to British Columbia's *Freedom of Information and Protection of Privacy Act*.

This report was unique in context as the recommended amendments are in addition to significant amendments to the Act enacted in 2021. Public bodies in British Columbia, and their service providers, should monitor the legislative process and pay attention to these continuous developments so they have sufficient time to comply with recommended amendments if they are implemented.

Background

British Columbia's *Freedom of Information and Protection of Privacy Act* ("FIPPA") regulates how over 2,900 provincial public bodies in British Columbia (e.g., provincial government ministries and agencies, municipalities, crown corporations, post-secondary institutions, school boards, health authorities and self-governing bodies of professions) collect, use, disclose and retain personal information. FIPPA also provides access rights to certain records and personal information held by public bodies in British Columbia and establishes a regime of independent review and oversight.

FIPPA is subject to mandatory review by a special committee of the Legislative Assembly every six years. Recent notable developments in the review process include:

- In 2016, a special committee published a [report](#) recommending extensive amendments to FIPPA. The recommendations were not implemented.
- In June 2021, the Legislative Assembly appointed another special committee (the "Special Committee") to review and recommend amendments to FIPPA.
- In November 2021, before the Special Committee issued a report, the Government of British Columbia enacted [Bill 22, *Freedom of Information and Protection of Privacy Amendment Act, 2021*](#) ("Bill 22") to make significant amendments to FIPPA. The amendments included modifications to FIPPA's data residency requirements, new privacy breach notification obligations, requirements for privacy management programs and new privacy offences. See BLG bulletin [Changes to B.C.'s public sector privacy legislation](#).

In June 2022, the Special Committee published a report titled *FIPPA for the Future* (the “Report”) with 34 recommendations for amendments to FIPPA. The Special Committee did not make substantive recommendations regarding the amendments to FIPPA made by Bill 22 in November 2021, but instead recommended the appointment of a special committee within two years to conduct a targeted review of those amendments.

The Information and Privacy Commissioner for British Columbia (the “Privacy Commissioner”) announced his support for the Report, noting that “[i]f the Committee’s recommendations are implemented by government, they would broaden the access to information provisions and modernize privacy protection measures – important steps to bring the legislation forward in the digital age of technological advancement.”

Summary of key recommendations

Following is a summary of some of the Special Committee’s recommendations for amendments to FIPPA, organized under the three central purposes of FIPPA: (i) access to information; (ii) protection of privacy; and (iii) oversight/enforcement.

Access to Information

- **Culture of transparency:** Establish a duty to document decisions and actions; extend freedom of information provisions to administrative functions of the Legislative Assembly; ensure that any entity created or owned by a public body is subject to FIPPA; clarify mandatory and discretionary exceptions to disclosure (including those dealing with cabinet and local public body confidences, policy advice and recommendations, and legal privilege).
- **Proactive disclosure:** Ensure that information held by public bodies is considered public by default. Information (including records relating to public procurement processes) should be proactively released without undue delay (subject only to exceptions outlined in FIPPA).

- **System effectiveness:** Modernize the freedom of information system by using technological solutions, automation and standardization; strengthen the duty to assist applicants; establish a right to anonymity for applicants; reduce the statutory timeline to respond to access requests and provide an automatic waiver of fees when the statutory timeline is not met.
- **Indigenous Peoples:** Conduct a comprehensive review of FIPPA to address the evolving relationship with Indigenous governing bodies.

Protection of Privacy

- **New technologies:** Examine issues associated with new technologies (e.g., de-identification, automated decision-making, biometrics, the right to be forgotten, data-linking and data destruction) and develop regulations that address transparency, privacy protection and oversight of new technologies (including notification and record-keeping rights/requirements for automated decision-making).
- **Privacy management:** Require public bodies to correct personal information when there are reasonable grounds to do so.
- **Health information:** Enact comprehensive stand-alone health information privacy legislation; clarify that individuals and their representatives are exempt from fees when requesting access to their personal information (including health information).

Oversight/Enforcement

- **Consultation:** Require consultation with the Privacy Commissioner for new legislation that has implications for access to information or protection of privacy or would override FIPPA.
- **Enhanced rights and powers:** Allow the Privacy Commissioner to share information with regulatory counterparts across Canada and to disclose information if it is in the public interest to do so; provide the Privacy Commissioner with powers to review matters or allegations of unauthorized destruction of records.

Comment

Notwithstanding significant amendments to FIPPA in 2021, the Report recommends further amendments to address issues and gaps that still exist in FIPPA and to establish a culture of increased transparency and accountability. Some of the recommendations for proactive disclosure, transparent documentation and privacy management may present staffing, budgetary, administrative and similar resourcing challenges for public bodies and their service providers.

It is difficult to predict whether and when the Special Committee's recommendations will be accepted and implemented by the Legislative Assembly. Public bodies and their service providers should monitor the legislative process and pay attention to these continuous developments so they have sufficient time to comply with recommended amendments to FIPPA. ■

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